

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED
JUN 28 2001

CHAMBERS OF CHIEF JUDGE
THOMAS F. HOGAN

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

JUL 2 - 2001

NANCY MAYER-WHITTINGTON, CLERK
U.S. DISTRICT COURT

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

**STIPULATION AND (PROPOSED) ORDER ON CONSOLIDATION OF
CLAIMS AND BRIEFING SCHEDULE FOR MOTIONS TO DISMISS
FOR LACK OF PERSONAL JURISDICTION**

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, that pursuant to Federal Rules of Civil Procedure 18 and 42(a) and the Court's Memorandum Opinion of June 7, 2001 in Empagran S.A. v. F. Hoffman-La Roche Ltd. (Civ. No. 00-1686) (TFH) ("Empagran"), Plaintiffs The Procter & Gamble Company and The Procter & Gamble Manufacturing Company (collectively "Procter & Gamble") are permitted to consolidate the claims asserted by Procter & Gamble in Empagran with the claims remaining in this action, and if that consolidation is permitted, Procter & Gamble will have no pending claims in Empagran. It is further stipulated and agreed by the undersigned that Procter & Gamble is permitted to supplement the First Amended Complaint in this action, rather than the complaint in Empagran, in response to the Court's requests for supplemental allegations in the June 7, 2001 Empagran opinion at pp. 9, 11 and 17 and in the Court's Order Re: Joint Motion to Dismiss concerning direct action cases, also dated June 7, 2001. Procter & Gamble's Second Amended Complaint, a copy

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of which Procter & Gamble shall attach hereto as Exhibit A, shall be deemed filed as of June 27, 2001, subject to approval by the Court of this Stipulation.

It is also stipulated and agreed by the undersigned that each Defendant's response to Procter & Gamble's Second Amended Complaint shall be served the later of either (i) 30 days after June 27, 2001, or (ii) the date upon which such defendant would otherwise be required to serve a responsive pleading to the Second Amended Complaint. Any memorandum of points and authorities in opposition to any motion filed in response to the Second Amended Complaint shall be served 21 days after service of such motion, and any reply in support of such motion shall be served 14 days after service of any such opposition. However, Procter & Gamble reserves the right to seek an extension of those dates from the Court to obtain discovery related to personal jurisdiction, to the extent permitted by the Court.

The parties further stipulate that all defenses, including, but not limited to, the defenses of lack of personal jurisdiction, insufficiency of service, improper venue, subject matter jurisdiction, standing, and that the Second Amended Complaint fails to comport with the leave to supplement granted by the Court, are expressly reserved. The parties further agree that this Stipulation and Order will not resuscitate any claim or action that was previously released and/or dismissed.

Dated: June 27, 2001

Respectfully submitted,

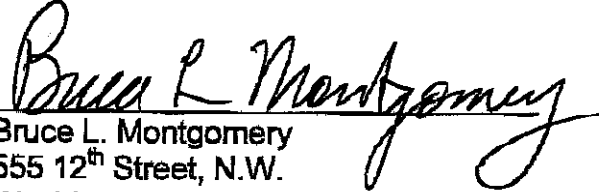
WAITE, SCHNEIDER, BAYLESS
& CHESLEY CO., L.P.A.



Robert Heuck II
1513 Fourth & Vine Tower
One West Fourth Street
Cincinnati, Ohio 45202
(513) 621-0267

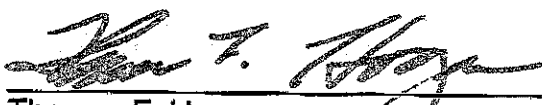
Attorneys for Plaintiffs, The Procter & Gamble Company, The Procter & Gamble Manufacturing Company, The Procter & Gamble Distributing Company, and Sundor Brands, Inc.

ARNOLD & PORTER


Bruce L. Montgomery
555 12th Street, N.W.
Washington, D.C. 20004
(202) 942-5000

Attorneys for Hoffmann-La Roche Inc.
and Roche Vitamins Inc., and for Purposes of
this Stipulation, On Behalf of All Defendants
Properly Served In the Above-Captioned Action

SO ORDERED:


Thomas F. Hogan
United States District Judge

Jan 29, 2001

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic service this 27th day of June, 2001 upon all counsel of record pursuant to the Court's May 17, 2000 Order regarding Electronic Service.


Robert Heuck II

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company,
The Procter & Gamble Manufacturing Company,
The Procter & Gamble Distributing Company,
and Sundor Brands,

Plaintiffs

v.

BASF Aktiengesellschaft,
BASF Corporation,
F. Hoffman-LaRoche Ltd.,
Hoffman-LaRoche, Inc.,
Roche Vitamins, Inc.
Rhone-Poulenc S.A.,
Rhone-Poulenc, Inc.,
Rhone-Poulenc Animal Nutrition, Inc.,
Eisai Company, Ltd.,
Eisai U.S.A., Inc.,
Daiichi Pharmaceutical Company,
Daiichi Pharmaceutical Corporation,
Takeda Chemical Industries, Ltd.,
Takeda Vitamin & Food USA, Inc.,
Akzo Nobel, Inc.,
Akzo Nobel NV,
Bioproducts, Inc.,
DeGussa-Huls Aktiengesellschaft,
DeGussa-Huls Corporation,
Reilly Chemicals S.A.,
Reilly Industries, Inc.,
UCB S.A.,
UCB, Inc.,
Lonza Aktiengesellschaft,
Lonza, Inc.,
Chinook Group, Ltd.,
Chinook Group, Inc.,
DCV, Inc., and

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

**SECOND AMENDED
COMPLAINT FOR
VIOLATIONS OF THE
FEDERAL AND OHIO
ANTITRUST LAWS**

(Jury Trial Demanded)

DuCoa L.P.,

Defendants.

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)

Plaintiffs, The Procter & Gamble Company, The Procter & Gamble Manufacturing Company, The Procter & Gamble Distributing Company and Sundor Brands, Inc., (collectively, "Plaintiffs"), bring this action against the above-named Defendants for treble damages and injunctive relief under the antitrust laws of the United States and the State of Ohio. Plaintiffs, demanding a trial by jury, complain and allege as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted against the above-named Defendants under the Sherman Antitrust Act, 15 U.S.C. §1, the Clayton Act, 15 U.S.C. §§ 12, 15, 16 and 26, and the Ohio Valentine Act, O.R.C. §§ 1331.01 *et seq.*, to recover treble damages, injunctive relief, costs, attorneys' fees and prejudgment interest for the injuries Plaintiffs have sustained by reason of the Defendants' conspiracy to fix the prices of vitamins, allocate shares of the vitamin market, eliminate competition, limit supply and other unlawful conduct alleged herein.

2. This Court has jurisdiction over the federal antitrust claims pursuant to 28 U.S.C. §§ 1331 and 1337(a) and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, and has supplemental jurisdiction over the state law claims, which involve the same case or controversy, pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(b). Defendants transact business, maintain offices, have agents, and/or are found within this District and the State of Ohio. A substantial part of the events giving rise to Plaintiffs' claims occurred, and a substantial portion of the affected interstate trade and commerce described below has been carried

out, within this District and the State of Ohio. Defendants performed unlawful acts in furtherance of their unlawful combination and conspiracy within the Southern District of Ohio and elsewhere that were intended to affect and did affect Plaintiffs in this District. This action may be brought in this District pursuant to Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22 and 28 U.S.C. § 1391. Personal jurisdiction exists over all Defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and the Ohio Long-Arm Statute, O.R.C. § 2307.382.

PLAINTIFFS

4. Plaintiff The Procter & Gamble Company ("P&G") is a corporation organized under the laws of Ohio, with its principal place of business in Cincinnati, Ohio. The Procter & Gamble Manufacturing Company ("P&G Manufacturing") is a corporation organized under the laws of Ohio with its principal place of business in Cincinnati, Ohio. Plaintiff The Procter & Gamble Distributing Company ("P&G Distributing") is a corporation organized under the laws of the State of Ohio with its principal place of business in Cincinnati, Ohio. Sundor Brands, Inc., is a corporation organized under the laws of Florida with its principal place of business in Cincinnati, Ohio. During the period relevant to this action, from 1988 to the present, P&G and its subsidiary and affiliated companies have manufactured and distributed a wide variety of consumer products and sold them in Ohio, throughout the United States and around the world. These products have included Sunny Delight orange drink, JIF peanut butter, Fat-Free Pringles potato snacks, Oil of Olay skin care lotion and Pantene Pro-V shampoo. P&G, and its subsidiaries, divisions and affiliates (collectively "Procter & Gamble") annually purchase, and have purchased throughout the relevant time period, from the headquarters in Cincinnati and elsewhere substantial amounts of vitamins, vitamin premixes, vitamin precursors and components, vitamin blends, and/or bulk vitamin products (all of which are collectively referred to herein as "vitamins") from one or more of the Defendants

for use in the production of Procter & Gamble products in the United States and throughout the world. As a result, Procter & Gamble has been injured by reason of the conduct of Defendants alleged herein. The Procter & Gamble subsidiaries which purchased vitamins during the relevant time period have ratified the commencement of this action by The Procter & Gamble Company on their behalf and on behalf of their predecessors, pursuant to Federal Rule of Civil Procedure 17(a). A list of these subsidiaries is attached as Exhibit A. The ratifications of the subsidiaries are attached as Exhibit B. A red-lined version of this Second Amended Complaint indicating revisions from the First Amended Complaint in this action is attached hereto as Exhibit C.

DEFENDANTS

5. Defendant BASF Aktiengesellschaft ("BASF AG") is a corporation organized and existing under the laws of Germany, with operations in the United States. At all relevant times, BASF AG, through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. BASF AG, directly and through its affiliates that it dominates and controls and through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Defendant BASF AG in Germany, including Dieter Suter, the head of fine chemicals, and Hugo Strotmann, global marketing director for vitamins, set prices and sales volumes and made strategic marketing decisions for vitamins that BASF AG's affiliates, including Defendant BASF Corporation, sold in the United States and elsewhere. Personal jurisdiction exists over BASF AG, in part, based upon its activities and the activities of its corporate affiliates, in particular BASF

Corporation, including the production, distribution and sale of vitamins in the United States, and because BASF AG and its affiliates consistently have presented a common corporate image (e.g., BASF) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

6. Defendant BASF Corporation is a Delaware corporation with its principal place of business in Mount Olive, New Jersey. BASF Corporation is a wholly-owned subsidiary or affiliate of BASF AG, and is dominated by BASF AG, both with respect to the conduct of its business within the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, BASF Corporation has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. BASF AG and BASF Corp. are collectively referred to herein as "BASF." BASF is the world's second-largest vitamin maker, with approximately twenty percent of the market.

7. Defendant F. Hoffman-LaRoche, Ltd. ("Roche Ltd.") is a corporation organized and existing under the laws of Switzerland, with operations in the United States. Roche, Ltd. is a subsidiary of Roche Holding Ltd., a Swiss pharmaceutical company based in Basel, Switzerland. At all relevant times, Roche Ltd., directly and through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Roche Ltd., directly and through its affiliates that it dominates and controls and through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Roche Ltd. in Switzerland—including but not limited to Roland

Bronnimann (President of Roche Ltd.'s Vitamins and Fine Chemicals Division since 1989), Kuno Sommer (former North American Regional Manager for vitamins and Director of Worldwide Marketing for vitamins), and Andreas Hauri (who retired from Roche Ltd. in 1994 as Executive Vice-President and Director of Worldwide Marketing for vitamins)—set prices and sales volumes for vitamins that its affiliates sold in the United States and elsewhere. During the relevant time period and in furtherance of Defendants' unlawful combination and conspiracy, Roche Ltd. executives at the Vitamins and Fine Chemicals Division's head office in Kaiseraugst, Switzerland also handled strategic marketing decisions for vitamins sold by its affiliates, including Defendants Hoffman-LaRoche, Inc. and Roche Vitamins Inc., in the United States and elsewhere throughout the world, and those decisions were implemented on an operational level by five area centers, including one for North America. Personal jurisdiction exists over Roche Ltd. based, in part, upon its activities and the activities of its corporate affiliates, in particular Hoffman-LaRoche Inc. and Roche Vitamins Inc., including the production, distribution and sale of vitamins in the United States, and because Roche Ltd. and its affiliates consistently have presented a common corporate image (e.g., Roche and Roche Vitamins) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

8. Defendant Hoffman-LaRoche, Inc., ("Roche Inc.") is a New Jersey corporation with its principal place of business in Nutley, New Jersey. Roche Inc. is wholly controlled and dominated by Roche Ltd. At all relevant times, Roche Inc., directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Defendant Roche Ltd. based in Switzerland—including but not limited to Roland Bronnimann (President of Roche Ltd.'s Vitamins

and Fine Chemicals Division since 1989), Kuno Sommer (former North American Regional Manager for vitamins and Director of Worldwide Marketing for vitamins), and Andreas Hauri (who retired from Roche Ltd. in 1994 as Executive Vice-President and Director of Worldwide Marketing for vitamins)— set prices and sales volumes and made strategic marketing decisions for the vitamins that Roche Inc. sold in the United States. Until at least 1997, Roche Inc. was directly engaged in the distribution and sale of vitamins in the United States and elsewhere.

9. Defendant Roche Vitamins, Inc. ("Roche Vitamins") is a Delaware corporation with its principal place of business in Parsipanny, New Jersey. Roche Vitamins is wholly controlled and dominated by Roche Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Roche Vitamins, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Defendant Roche Ltd. based in Switzerland—including but not limited to Roland Bronnimann (President of Roche Ltd.'s Vitamins and Fine Chemicals Division since 1989), Kuno Sommer (former North American Regional Manager for vitamins and Director of Worldwide Marketing for vitamins), and Andreas Hauri (who retired from Roche Ltd. in 1994 as Executive Vice-President and Director of Worldwide Marketing for vitamins)— set prices and sales volumes and made strategic marketing decisions for the vitamins that Roche Vitamins sold in the United States. Roche Ltd., Roche Inc. and Roche Vitamins are collectively referred to herein as "Roche." Roche is the world's largest vitamin maker, with approximately forty percent of the market.

10. Defendant Rhone-Poulenc S.A. ("RP SA") is a corporation organized and existing

under the laws of France, with operations in the United States. At all relevant times, RP SA, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. RP SA, directly and through affiliates it dominates and controls and through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, and fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of RP SA in France set the prices and sales volumes and made strategic marketing decisions for vitamins that RP SA's affiliates, including Defendants Rhone-Poulenc, Inc. and Rhone-Poulenc Animal Nutrition, Inc., sold in the United States and elsewhere. Personal jurisdiction exists over RP SA, in part, based upon its activities and the activities of its corporate affiliates, in particular Rhone-Poulenc Animal Nutrition, Inc. and Rhone-Poulenc, Inc., including the production, distribution and sale of vitamins in the United States and because RP SA and its affiliates consistently have presented a common corporate image (e.g. Rhone-Poulenc or Rhone-Poulenc Animal Nutrition) to customers in the United States and elsewhere through their advertising and marketing efforts and materials. In July 1999, the shareholders of RP SA and Hoechst AG approved the merger of the two companies' pharmaceutical and certain other operations under the umbrella of a new corporate entity, Aventis, with headquarters in Strasbourg, France.

11. Defendant Rhone-Poulenc, Inc. ("RP Inc.") is a New York corporation with its principal place of business in Research Triangle Park, New Jersey. RP Inc. is wholly controlled and dominated by RP SA, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, RP Inc.,

directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Until at least January 1, 1998, RP Inc. was based in New Jersey and distributed and sold vitamins in the United States and elsewhere. Until January 1, 1998, Defendant RP Inc. sold vitamins through its division Rhone-Poulenc Animal Nutrition. On or about January 1, 1998, Defendant RP Inc. contributed its animal nutrition and vitamins product segments to a new company, Rhone-Poulenc Animal Nutrition, Inc. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Defendant RP SA in France set prices and sales volumes and made strategic marketing decisions for vitamins that RP Inc. sold in the United States.

12. Defendant Rhone-Poulenc Animal Nutrition, Inc. ("RPAN") is a Delaware corporation with its principal place of business in Atlanta, Georgia. RPAN is wholly controlled and dominated by RP SA, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, RPAN directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. RP SA, RP Inc., and RPAN are collectively referred to herein as "Rhone-Poulenc." Rhone-Poulenc is the world's third largest vitamin maker, with approximately 15% of the market.

13. Defendant Eisai Company is a corporation organized and existing under the laws of Japan, with operations in the United States. At all relevant times, Eisai Company, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Eisai Company, directly and through its affiliates that it dominates and controls through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and

rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Eisai Company in Japan set prices and sales volumes and made strategic marketing decisions for vitamins that Eisai U.S.A., Inc. and its affiliates sold in the United States and elsewhere. Personal jurisdiction exists over Eisai Company, in part, based on its activities and the activities of its corporate affiliates, in particular Eisai U.S.A., Inc. including the production, distribution and sale of vitamins in the United States, and because Eisai Company and its affiliates have presented a common corporate image (e.g. Eisai) to customers through their advertising and marketing efforts.

14. Defendant Eisai U.S.A., Inc. is a California corporation with its principal place of business in Teaneck, New Jersey. Eisai U.S.A., Inc. is wholly controlled and dominated by Eisai Company, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Eisai U.S.A., Inc., directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Eisai Company and Eisai U.S.A., Inc. are collectively referred to herein as "Eisai."

15. Defendant Daiichi Pharmaceutical Company is a corporation organized and existing under the laws of Japan, with operations in the United States. At all relevant times, Daiichi Pharmaceutical Company directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Daiichi Pharmaceutical Company, directly and through its affiliates that it dominates and controls through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins

pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Daiichi Pharmaceutical Company in Japan set prices and sales volumes and made strategic marketing decisions for vitamins that Daiichi Pharmaceutical Corporation and its affiliates sold in the United States and elsewhere. Personal jurisdiction exists over Daiichi Pharmaceutical Company, in part, based on its activities and the activities of its corporate affiliates, in particular Daiichi Pharmaceutical Corporation, including production, distribution and sale of vitamins in the United States, and because Daiichi Pharmaceutical Company and its affiliates have presented a common corporate image (e.g. Daiichi) to customers through their advertising and marketing efforts.

16. Defendant Daiichi Pharmaceutical Corporation is a Delaware corporation with its principal place of business in Montvale, New Jersey. Daiichi Pharmaceutical Corporation is wholly controlled and dominated by Daiichi Pharmaceutical Company, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Daiichi Pharmaceutical Corporation directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Daiichi Pharmaceutical Company and Daiichi Pharmaceutical Corporation are collectively referred to herein as "Daiichi."

17. Takeda Chemical Industries, Ltd. ("Takeda Chemical") is a corporation organized and existing under the laws of Japan, with operations in the United States. At all relevant times, Takeda Chemical, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Takeda Chemical directly and through its affiliates that it dominates and controls and

through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Takeda Chemical in Japan set prices and sales volumes and made strategic marketing decisions for vitamins that Takeda Vitamin & Food U.S.A., Inc. and its affiliates sold in the United States and elsewhere. Personal jurisdiction exists over Takeda Chemical, in part, based upon its activities and the activities of its corporate affiliates, in particular Takeda Food & Vitamin U.S.A., including the production, distribution and sale of vitamins in the United States, and because Takeda Chemical and its affiliates consistently have presented a common corporate image (e.g. Takeda) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

18. Defendant Takeda Vitamin and Food U.S.A., Inc. ("Takeda Vitamin") is a North Carolina corporation, with its principal place of business in Wilmington, North Carolina. Takeda Vitamin is wholly controlled and dominated by Takeda Chemical, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Takeda Vitamin, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Takeda Chemical and Takeda Vitamin are collectively referred to herein as "Takeda."

19. Defendant Akzo Nobel NV ("Akzo Nobel") is a corporation organized and existing under the laws of the Netherlands with operations in the United States. Akzo Nobel manufactures vitamins and sells such vitamins in the United States and foreign countries. Akzo Nobel, directly

and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over Akzo Nobel based, in part, on its activities as well as those of its corporate affiliates, in particular Akzo Nobel, Inc., including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because Akzo Nobel and its affiliates present a common corporate image (e.g. Akzo) to United States customers.

20. Defendant Akzo Nobel, Inc. ("Akzo, Inc.") is a Delaware corporation with its principal place of business in Chicago, Illinois. Akzo, Inc. is wholly controlled and dominated by Akzo Nobel, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, Akzo, Inc. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. Akzo Nobel and Akzo, Inc. are collectively referred to herein as "Akzo."

21. Defendant DeGussa-Huls Aktiengesellschaft ("DeGussa-Huls AG") is a corporation organized and existing under the laws of Germany with operations in the United States. DeGussa-Huls AG manufactures vitamins and sells such vitamins in the United States and foreign countries. DeGussa-Huls AG, directly and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over DeGussa-Huls AG based, in part, on its activities as well as those of its corporate affiliates, in particular DeGussa-Huls

Corporation, including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because DeGussa-Huls AG and its affiliates present a common corporate image (e.g. DeGussa-Huls) to United States customers.

22. Defendant DeGussa-Huls Corporation ("DeGussa-Huls Corp.") is a Delaware corporation with its principal place of business in Ridgefield Park, New Jersey. DeGussa-Huls Corp. is wholly controlled and dominated by DeGussa-Huls AG, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, DeGussa-Huls Corp. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. DeGussa-Huls AG and DeGussa-Huls Corp. are collectively referred to herein as "DeGussa-Huls."

23. Defendant Reilly Chemicals S.A. ("Reilly SA") is a corporation organized and existing under the laws of Belgium with operations in the United States. Reilly SA manufactures vitamins and sells such vitamins in the United States and foreign countries. Reilly SA, directly and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over Reilly SA based, in part, on its activities as well as those of its corporate affiliates, in particular Reilly Chemicals, Inc., including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because Reilly SA and its affiliates present a common corporate image (e.g. Reilly) to United States customers.

24. Defendant Reilly Industries, Inc. ("Reilly, Inc.") is an Indiana corporation with its principal place of business in Indianapolis, Indiana. Reilly, Inc. is wholly controlled and dominated by Reilly SA, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, Reilly, Inc. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. Reilly SA and Reilly, Inc. are collectively referred to herein as "Reilly."

25. Defendant UCB, S.A. ("UCB SA") is a corporation organized and existing under the laws of Belgium with operations in the United States. UCB SA manufactures vitamins and sells such vitamins in the United States and foreign countries. UCB SA, directly and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over UCB SA based, in part, on its activities as well as those of its corporate affiliates, in particular UCB, Inc., including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because UCB SA and its affiliates present a common corporate image (e.g. UCB) to United States customers.

26. Defendant UCB, Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia. UCB, Inc. is wholly controlled and dominated by UCB SA, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, UCB, Inc. has engaged in the business of the

manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. UCB SA and UCB, Inc. are collectively referred to herein as "UCB."

27. Defendant Bioproducts, Inc. ("Bioproducts") is a Delaware corporation with its principal place of business in Akron, Ohio. At all relevant times, Bioproducts, Inc. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. Bioproducts has allocated territories, customers, and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on interstate commerce.

28. Defendant Lonza Aktiengesellschaft ("Lonza AG") is a corporation organized and existing under the laws of Switzerland, with operations in the United States. Lonza AG manufactures vitamins, including vitamin B₃, in Switzerland and sells such vitamins in the United States and foreign countries. At all relevant times, Lonza AG, directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Lonza AG, directly and through its affiliates that it dominates and controls and through actions both within the United States and elsewhere, has allocated territories, customers and sales volumes and fixed prices for vitamins, including niacin and niacinamide in particular, pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. During the relevant time period and in furtherance of such unlawful agreements, executives of Defendant Lonza AG in Switzerland set prices and sales volumes and made strategic marketing decisions for vitamins that Lonza AG's affiliates, including Lonza, Inc., sold in the United States and elsewhere. Personal jurisdiction exists over Lonza AG, in part, based upon its activities and the activities of its corporate affiliates, in particular Lonza, Inc., including the

production, distribution and sale of vitamins in the United States, and because Lonza AG and its affiliates consistently have presented a common corporate image (*e.g.* Lonza) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

29. Defendant Lonza, Inc. is a New York corporation with its principal place of business in Fairlawn, New Jersey. Lonza, Inc. is wholly controlled and dominated by Lonza AG, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, Lonza, Inc., directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Lonza AG and Lonza, Inc. are collectively referred to herein as "Lonza."

30. Defendant Chinook Group Limited ("Chinook Group Ltd.") is a corporation with its headquarters in Toronto, Canada that was organized in and currently exists under the laws of Ontario, Canada. Effective June 30, 1999, Chinook Group, a limited partnership formed under the laws of the Province of Ontario, executed a General Conveyance that transferred to Chinook Group Ltd. (the corporation) all of the partnership interest in Chinook Group (the limited partnership) and all the assets and property of the partnership, and Chinook Group Ltd. (the corporation) assumed and agreed to perform all of the debts, obligations and liabilities of Chinook Group (the limited partnership). Chinook Group Ltd., directly and through its predecessors (including, in particular, the Chinook Group limited partnership) and affiliates, produces, distributes and sells various vitamins throughout the United States and elsewhere. Chinook Group Ltd., directly and through its affiliates that it dominates and controls and through actions both within the United States and elsewhere, has allocated territories and customers and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct,

substantial, and reasonably foreseeable effect on United States commerce. During the relevant period and in furtherance of such unlawful agreements, executives of Chinook Group Ltd. in Canada set prices and sales volumes and made strategic marketing decisions for vitamins that Chinook Group's affiliates, including Defendant Chinook Group, Inc., sold in the United States and elsewhere. Personal jurisdiction exists over Chinook Group Ltd., in part, based upon its activities and the activities of its corporate affiliates, in particular Chinook Group, Inc., including the production, distribution and sale of vitamins in the United States and because Chinook Group Ltd. and its affiliates consistently have presented a common corporate image (*e.g.* Chinook) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

31. Chinook Group, Inc. ("Chinook Inc.") is a Minnesota corporation with its principal place of business in White Bear Lake, Minnesota. Chinook Inc. is a wholly owned subsidiary of Defendant Chinook Group Ltd. In conjunction with Chinook Group Ltd., Chinook Inc. has distributed and sold vitamins including choline chloride throughout the United States and elsewhere. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Chinook Group Ltd. in Canada set prices and sales volumes and made strategic marketing decisions for vitamins that Chinook Inc. sold in the United States and elsewhere.

32. Defendant DCV, Inc. is a Delaware corporation with its principal place of business in Wilmington, Delaware. At all relevant times, DCV, Inc. directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere.

33. Defendant DuCoa, L.P. ("DuCoa") is a limited partnership with its principal place of business in Highland, Illinois. Du Coa is wholly controlled by DCV, Inc., both with respect to the conduct of its business within the United States generally and specifically with respect to its conduct

alleged in this Complaint. At all relevant times, DuCoa, directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere.

34. The acts charged in this Complaint to have been done by each of the Defendants were authorized, ordered or done by their officers, agents, employees, or representatives, while actively engaged in the management or conduct of each of the Defendant's affairs.

35. Whenever any reference is made in this Complaint to any Defendant or Co-Conspirator, the references shall include any predecessors, successors, parents, subsidiaries, affiliates, divisions, offices, agents or representatives of that Defendant or Co-Conspirator.

CO-CONSPIRATORS

36. Various other persons, firms and corporations, the identities of which are presently unknown, have participated as Co-Conspirators with the Defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof that had a direct, substantial and reasonably foreseeable effect on United States commerce. On information and belief, such Co-Conspirators include unnamed wholesalers and distributors of Defendants who were controlled by such Defendants or otherwise actively participated in the conspiracy.

INTERSTATE TRADE AND COMMERCE

37. During all or part of the relevant time period, Defendants and their Co-Conspirators were among the major manufacturers, sellers and/or distributors of vitamins in the United States and throughout the world.

38. During all or part of the relevant time period, the Defendants and their Co-Conspirators sold and shipped substantial quantities of vitamins in a continuous and uninterrupted flow in interstate and foreign commerce to customers, including Procter & Gamble, located in

states other than the state(s) or countries in which the Defendants produced the above-referenced products.

39. The business activities of the Defendants and their Co-Conspirators that are the subject of this Complaint, including, but not limited to, the sale of vitamins to Procter & Gamble, were within the flow of, or substantially affected, interstate trade and commerce. Those activities that took place outside the United States had direct, substantial, and reasonably foreseeable effects on United States commerce and on Plaintiffs in particular.

BACKGROUND AND NATURE OF TRADE AND COMMERCE

40. The Defendants are manufacturers and distributors of vitamins. Vitamins are organic compounds required in the diet of humans and animals for normal growth and maintenance of life. Vitamins are essential sources of certain coenzymes necessary for metabolism, the biochemical processes that support life. All known vitamins have been synthesized chemically, and various such synthesized vitamins are manufactured and sold by the Defendants and their Co-Conspirators.

41. The Defendants and their Co-Conspirators sell vitamins to Procter & Gamble and other manufacturers for use as ingredients in foods, skin and hair care products, and other products sold to consumers.

41(a). During the relevant period Procter & Gamble purchased vitamins for its beauty and hair care products on a coordinated, global basis from the Cincinnati headquarters of the parent company, P&G. P&G's Global Purchasing Manager coordinated and supervised purchasing of vitamins for Procter & Gamble beauty and hair care products through P&G's International Logistics Group in Cincinnati, Ohio. P&G employees in Cincinnati solicited and received quotations from vitamin manufacturers for vitamin requirements of Procter & Gamble facilities located outside the United States, including the United Kingdom, Ireland, Australia, China, India, Indonesia, Japan,

Taiwan, Brazil, Mexico, Columbia and France. P&G, the parent company, and/or P&G Manufacturing, in the United States, entered purchase contracts on behalf of Procter & Gamble with Defendants for the supply of vitamins to Procter & Gamble subsidiaries and/or operations located outside the United States. P&G personnel in Cincinnati monitored the requirements and arranged for the supply of vitamins for beauty and hair care products for Procter & Gamble subsidiaries and operations in Europe, Japan and elsewhere. Throughout the relevant period, sales by Defendants to the Procter & Gamble foreign subsidiaries of vitamins had direct, substantial, and reasonably foreseeable effects on United States commerce.

41(b). During the relevant time period, Procter & Gamble's worldwide purchases of vitamins were subject to the ultimate supervision and control of P&G, the parent company, in Cincinnati, Ohio. Purchasing managers at the parent company in the United States monitored Procter & Gamble's worldwide purchases of vitamins and communicated with Procter & Gamble personnel outside the United States concerning the procurement of vitamins. Purchases of vitamins outside the United States are subject to Procter & Gamble's Global Purchases Standards for Sourcing, issued by the parent company in Cincinnati. Employees of foreign Procter & Gamble subsidiaries who purchased vitamins were trained in Cincinnati by the parent company concerning sourcing strategy, preparation of inquiries and bidding packages and negotiations. The Procter & Gamble Corporate Purchasing Group in Cincinnati regularly issued materials on purchasing guidelines to employees of foreign Procter & Gamble companies engaged in vitamin purchasing. Throughout the relevant time period, sales by Defendants to the Procter & Gamble foreign subsidiaries of vitamins had direct, substantial, and reasonably foreseeable effects on United States commerce.

41(c). Plaintiff P&G Manufacturing entered into one or more agreements in the United States with one or more of the Defendants for the purchase of vitamins for shipment by the Defendants to Procter & Gamble facilities outside the United States. The prices charged to Procter & Gamble by Defendants pursuant to these agreements were supra-competitive as a result of the price-fixing conspiracy alleged herein. P&G Manufacturing suffered injury in the United States because the purchase agreements provided for payment by P&G Manufacturing of prices that were artificially high due to such price-fixing conspiracy. Such injury to P&G Manufacturing had direct, substantial and reasonably foreseeable effects on United States commerce.

41(d). The Procter & Gamble companies listed on Exhibit A hereto are subsidiaries of the Procter & Gamble Company. Purchases of vitamins by Procter & Gamble subsidiaries listed on Exhibit A caused injury in United States commerce to the American parent company, The Procter & Gamble Company, because the excessive prices charged by Defendants to the closely-held foreign subsidiaries directly impacted the United States operations and earnings of the parent company. The Procter & Gamble Company serves as the global headquarters in the United States for foreign Procter & Gamble subsidiaries. The purchasing operations of The Procter & Gamble Company and its subsidiaries are extensively coordinated through frequent communications, global strategy and direction from the Cincinnati headquarters. The injury to The Procter & Gamble Company from Defendants' charging of excessive prices to foreign Procter & Gamble companies was suffered in the United States. Such injury affected United States commerce.

42. During the relevant period, Roche, BASF and Rhone-Poulenc were by far the dominant producers of vitamins controlling more than seventy-five percent of the worldwide vitamin market. During the relevant period, these Defendants controlled more than ninety-five percent of the worldwide markets for vitamins A and E. As a result, Plaintiffs typically had no

alternative to purchasing their vitamins from Defendants. Throughout this same period, Defendants falsely represented themselves as competitors in the manufacture, distribution and sale of vitamins when, in fact, they were participants in a worldwide *per se* unlawful conspiracy, the purpose and affect of which were to eliminate and suppress competition.

43. Absent Defendants' *per se* unlawful horizontal agreements to allocate territories, customers, sales, volumes and market shares and fix prices and rig bids for vitamins, Procter & Gamble would have obtained lower prices for the vitamins they purchased.

44. There is a single world market for the production, sale and distribution of vitamins. Defendants produce, distribute, sell, advertise and market vitamins throughout the world. Defendants' vitamin production and distribution facilities are located throughout the world. For example, Defendant F. Hoffman-LaRoche Ltd. and its affiliates, which are the world's largest producers of synthetic vitamins and carotenoids, own and operate twelve production sites located in seven countries, including the United States, that supply the global vitamin market. Defendants have bid or supplied vitamins to Procter & Gamble in the United States and elsewhere around the world.

45. Defendants' global conspiracy directly affected the world market for the production, distribution and sale of vitamins as well as United States interstate and foreign commerce in those vitamin products, which is an integral part of the overall world market. The anticompetitive purpose and effect of Defendants' unlawful combination and conspiracy were to artificially inflate the prices that Procter & Gamble and others paid for vitamins in the United States and throughout the rest of the world.

46. Defendants' illegal conduct both within the United States and elsewhere was intended

to have and did have a direct, substantial, and reasonably foreseeable effect upon business and commerce in the United States and upon the interstate and foreign commerce of the United States. In particular, as a result of their unlawful combination and conspiracy, Defendants: (a) eliminated or suppressed competition in the production, distribution and sale of vitamins; and (b) inflated the prices that Procter & Gamble and others paid for vitamins in the United States and throughout the world.

47. Defendants have received bid solicitations or pricing requests from and negotiated with Plaintiffs and other customers to supply vitamins in the United States and throughout the world. In this connection, Defendants prepared bids and price quotations at their offices in the United States which they transmitted across state and national boundaries to Plaintiffs and other customers using the United States mails and other interstate and foreign communication, including electronic communications, and financial facilities.

48. During the relevant period and continuing to the present, Defendants produced, distributed and sold vitamins in interstate and foreign commerce. Defendants' production, distribution and sale of vitamins involved a substantial and continuous flow of commodities, payments and personnel in, and that directly affect, interstate and foreign commerce, including at least the following:

- (a) Defendants have sold and provided vitamins in a continuous and uninterrupted flow of interstate and foreign commerce to Plaintiffs and other customers located in the United States and elsewhere throughout the world;
- (b) Defendants have purchased and used substantial quantities of raw materials, equipment and supplies in connection with the production, distribution and sale of vitamins, and have transported those materials in a continuous and uninterrupted

flow of interstate and foreign commerce from the states or countries of origin into the states or countries where the items were purchased, used or consumed;

- (c) Plaintiffs and other customers have paid Defendants for vitamins with checks, letters of credit and other financial instruments that were negotiated, communicated and transported in interstate and foreign commerce;
- (d) As a result of Defendants' multinational operations, corporate structure and ownership, on a daily basis Defendants transferred funds and exchanged information among offices and facilities that are engaged in interstate and foreign commerce;
- (e) Defendants' officers, employees, agents and other representatives have regularly traveled in interstate and foreign commerce and have used interstate and foreign mail, telephone and wire facilities in furtherance of their illegal combination and conspiracy.

49. On September 30, 1998, the United States Department of Justice, Antitrust Division ("DOJ") filed under seal a criminal information against Lonza as the result of a federal grand jury probe conducted in Dallas, Texas. That information was unsealed on March 1, 1999, and revealed that Lonza was accused of conspiring with the other leading manufacturers of vitamin B₃ (niacinamide) to eliminate competition in the United States and elsewhere from at least January of 1992 to at least March of 1998. Lonza agreed to plead guilty to this charge and pay a \$10.5 million fine.

50. On March 2, 1999, criminal informations were filed by the DOJ against: (a) Lindell Hilling, former President of DuCoa; (b) J.L. "Pete" Fischer, President, Basic and International Products, of DuCoa; (c) Antonio Felix, Vice-President, Basic and International Products, of DuCoa.; (d) John Kennedy, Vice-President of Sales and Marketing of Chinook Group; and (e)

Robert Samuelson, Sales Manager of Chinook Group. These five executives were charged with conspiring with others to suppress and eliminate competition in the vitamin B₄ market in the United States and elsewhere from at least January of 1988 through September of 1998. All three executives pleaded guilty to these criminal charges.

51. On May 20, 1999, Roche Ltd. pleaded guilty to a criminal information filed by the DOJ for fixing prices and allocating customers and sales of certain vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Roche Ltd. agreed to pay a \$500 million fine, the highest criminal fine for an antitrust violation in history. Dr. Kuno Sommer, a former Roche Ltd. executive, was separately charged for attempting to cover up the conspiracy, agreed to plead guilty, and was sentenced to a four-month prison term and a \$100,000 fine.

52. On May 20, 1999, BASF AG pleaded guilty to a criminal information filed by the DOJ for fixing prices and allocating customers and sales of certain vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. BASF AG agreed to pay a \$225 million fine.

53. Roche Ltd., BASF AG, and other unnamed Co-Conspirators were charged by the DOJ with agreeing with the world's other major vitamin manufacturers to suppress and eliminate competition in the United States and elsewhere, by among other things:

- (a) agreeing to fix and raise prices on Vitamins A, B2, B5, C, E, beta carotene and vitamin premixes in the U.S. and elsewhere;
- (b) agreeing to allocate the volume of sales and market shares of such vitamins in the U.S. and elsewhere;
- (c) agreeing to divide contracts to supply vitamin premixes to customers in the U.S. and elsewhere by rigging the bids for those contracts; and

- (d) participating in meetings and conversations to monitor and enforce adherence to the agreed-upon prices and market shares.

54. The DOJ also announced on May 20, 1999 that Rhone-Poulenc S.A. had been cooperating in its investigation pursuant to the DOJ's Corporate Leniency Program, under which a company may qualify for protection from criminal prosecution if it voluntarily reported its involvement in a crime and satisfies certain other criteria.

55. On or about September 10, 1999, Takeda Chemical entered into a plea agreement with the DOJ whereby Takeda Chemical agreed to plead guilty to fixing the prices and allocating sales of vitamins B₂ and C in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Takeda Chemical agreed to pay a fine to the United States of \$72 million.

56. On September 10, 1999, Defendant Eisai Company pleaded guilty to criminal charges brought by the DOJ and agreed to pay a fine of \$40 million to the United States for fixing the price and allocating the sales of vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

57. On September 10, 1999, Defendant Daiichi Pharmaceutical Company pleaded guilty to criminal charges brought by the DOJ and agreed to pay a fine of \$25 million to the United States for fixing the price and allocating the sales of vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

CONSPIRACY TO RESTRAIN TRADE

58. Beginning at least as early as January 1988 and continuing thereafter, the exact dates being unknown to Plaintiffs, Defendants and Co-Conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition, allocate territories, customers, sales volumes and market shares, rig bids and artificially raise, maintain, stabilize or fix prices of vitamins. The combination and conspiracy engaged in by Defendants and Co-Conspirators was an

unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and in further restraint of trade and commerce under the Ohio Valentine Act, O.R.C. §§ 1331.01 *et seq.*

59. From at least January 1990 through February 1999, the exact dates being unknown to Plaintiffs, BASF, Roche, Rhone-Poulenc, and other co-conspirators, would meet on at least a quarterly basis to exchange pricing information, sales volumes, and market shares at the country, regional, and global levels. In addition to these regular meetings, the co-conspirators engaged in numerous other communications, both by telephone and in person, to monitor market conditions and update each other on the latest pricing and sales results on a region-by-region basis, or to otherwise facilitate and implement the conspiracy.

60. In addition to the meetings described above, top-level representatives of Roche, BASF, Rhone-Poulenc, and other co-conspirators would meet once a year to set what they called the "budget" for the following year. During these "budget" meetings, the co-conspirators would project global sales volumes for vitamins A and E, and allocate among them the next year's market share for those vitamins, broken down by geographic region (including the United States). The co-conspirators would also agree at these "budget" meetings upon (a) the total volume of vitamins A and E to be sold by the co-conspirators in the United States and elsewhere, (b) the amount of the price increases for vitamins A and E involved in the conspiracy at the time, (c) the dates that they would announce the price increases, and (d) which co-conspirator would first announce the price increases. Daiichi, Takeda and Eisai joined in the conspiracy.

61. BASF, Roche, Rhone-Poulenc, Eisai, and the other co-conspirators sold Vitamins A and E at the agreed-upon prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere.

62. In or about January 1991, BASF, Roche, Rhone-Poulenc, and other co-conspirators expanded the scope of the conspiracy to include Vitamin B₂, Vitamin B₅, Vitamin C, Beta Carotene, and Pre-mix.

63. The alleged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendants and Co-Conspirators, the substantial terms of which were:

- (a) to agree to fix and maintain prices and to coordinate price increases for the sale of vitamins in the United States and elsewhere;
- (b) to agree to allocate among the corporate conspirators the volume of sales of vitamins in the United States and elsewhere;
- (c) to agree to allocate among the corporate conspirators customers of vitamins in the United States and elsewhere;
- (d) to allocate among the corporation conspirators all or part of certain contracts to supply vitamins to various customers located throughout the United States;
- (e) to refrain from submitting bids, or to submit collusive, non-competitive, and rigged bids to supply vitamins to various customers located in the United States; and
- (f) to supply vitamins to various customers located throughout the United States at supra-competitive prices, and receive excessive compensation as a result.

64. For the purposes of forming and carrying out the illegal combination and conspiracy, Defendants and Co-Conspirators did those things that they combined and conspired to do, including, among other things:

- (a) participating in meetings and conversations in the United States and elsewhere to discuss the prices and volume of vitamins sold in the United States and elsewhere;

- (b) agreeing, during those meetings and conversations, to charge prices at specified levels and otherwise to increase and maintain prices of vitamins sold in the United States and elsewhere;
- (c) agreeing, during those meetings and conversations, to allocate among the corporate conspirators the approximate volume of vitamins to be sold by each corporate conspirator in the United States and elsewhere;
- (d) agreeing, during those meetings and conversations, to allocate among the corporate conspirators customers of vitamins in the United States and elsewhere;
- (e) agreeing, during those meetings and conversations, to divide worldwide markets for vitamins among the corporate conspirators;
- (f) agreeing, during those meetings and conversations, to restrict vitamin producing capacity among the corporate conspirators;
- (g) exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreement;
- (h) issuing price announcements and price quotations in accordance with the agreements reached;
- (i) discussing among Co-Conspirators the submission of prospective bids to supply vitamins to customers located throughout the United States;
- (j) designating which corporate conspirator would be the designated low bidder for contracts to supply vitamins to customers located throughout the United States;
- (k) discussing and agreeing upon prices to be contained within the bids for contracts to supply vitamins to customers in the United States;
- (l) refraining from bidding or submitting intentionally high, complementary bids for the

contracts to supply vitamins to customers in the United States; and

- (m) supplying vitamins to various customers in the United States at non-competitive prices and receiving compensation therefor.

65. In furtherance of their unlawful combination and conspiracy, Defendants agreed to take steps to suppress, eliminate and control competition from independent blenders and mixers who produce and sell vitamins in competition with Defendants. In particular, Defendants engaged in a price squeeze maintaining the prices at which they sold individual vitamin components ("straight vitamins" or "straights") to independent blenders or mixers of vitamin premixes at higher prices relative to the prices that Defendants charged for their own premixes. As part of this strategy, Defendants used their dominance over the production and sale of straights to eliminate, suppress or control competition from independent premix blenders or mixers that might threaten Defendants' dominance and control of the production of and prices for vitamin premixes.

66. Defendants and their co-conspirators have engaged in a variety of acts to facilitate the formation and conduct of their unlawful combination and conspiracy, including the following:

- (a) Defendants and their co-conspirators have exchanged and shared data regarding sales volumes and vitamins and the raw materials used to produce vitamins to monitor and enforce adherence to their agreed upon scheme to allocate territories, customers, sales volumes and market shares and to rig bids and fix prices of vitamins.
- (b) Defendants' European executives and their American and Asian marketing counterparts implemented various agreements to allocate territories, customers, sales volumes and market shares among the Defendants and their co-conspirators.
- (c) Defendants and their co-conspirators have manipulated the supply and sale of

intermediate chemicals used to produce vitamins, and have made threats to refuse to sell such intermediate chemicals to others unless they abided by restrictions on where and to whom vitamins could be marketed.

- (d) Defendants have purchased and sometimes closed vitamin manufacturing facilities and formed joint ventures to control the supply of vitamins.

67. Each Defendant has participated in one or more overt acts in furtherance of the conspiracy alleged above and has participated in conspiratorial activities and attended conspiratorial meetings.

EFFECTS OF CONSPIRACY TO RESTRAIN TRADE

68. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) Price competition in the sale of vitamins among the Defendants and their Co-Conspirators has been restrained, suppressed and eliminated throughout the United States and elsewhere;
- (b) Prices for vitamins sold by the Defendants and their Co-Conspirators have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels throughout the United States and elsewhere; and
- (c) Purchasers of vitamins from the Defendants and their Co-Conspirators have been deprived of the benefit of free and open competition.
- (d) Competition among sellers of vitamins in the United States and elsewhere has been restricted.

FRAUDULENT CONCEALMENT TOLLED THE STATUTE OF LIMITATIONS

69. Until shortly before the filing of this Complaint, Procter & Gamble had no

knowledge that Defendants and their Co-Conspirators were violating the antitrust laws as alleged herein. Procter & Gamble could not have discovered any of the violations at any time prior to this date by the exercise of due diligence because of fraudulent and active concealment of the conspiracy by Defendants and their Co-Conspirators.

70. The affirmative actions of Defendants and their Co-Conspirators alleged herein were wrongfully concealed and carried out in a manner that precluded detection. Procter & Gamble had no knowledge of the antitrust violations herein alleged or any facts that might have led to their discovery. Procter & Gamble could not have uncovered the violations alleged herein at an earlier date by the exercise of due diligence inasmuch as the means for discovering their causes of action against Defendants were not reasonably ascertainable due to the fraudulent concealment of their activities through various means and methods designated to avoid detection. The Defendants and their Co-Conspirators secretly conducted activities in furtherance of the conspiracy and attempted to confine information concerning the conspiracy to key officials of the involved companies.

71. Defendants and their co-conspirators were concerned about maintaining the secrecy of the conspiracy. The participants at the conspiracy meetings expressly understood that no notes were to be kept evidencing the fact and nature of the meetings, the top-level members of the conspiracy ordered the co-conspirators to destroy all records and/or notes pertaining to those meetings. Roche executives continually emphasized to their subordinates that documents generated for use during the so-called "budget" meetings at which the market shares were allocated among the conspirators were to be kept to a minimum and destroyed immediately after the meetings. Furthermore, the co-conspirators used code numbers rather than their names to designate themselves in documents prepared in furtherance of the conspiracy.

72. In or about March 12, 1997, attorneys for the DOJ's Antitrust Division interviewed

Kuno Sommer of Roche in connection with a plea agreement reached between the DOJ and Roche for criminal antitrust violations arising out of the sale of another food additive, citric acid. In order to conceal the conspiracy alleged herein, top Roche officials agreed that Sommer would deny its existence and even rehearsed his "cover story" denying the cartel activity. At the March 12, 1997 interview, the DOJ attorneys questioned Sommer in detail about the existence of a vitamins cartel and Sommer lied to the DOJ attorneys by, *inter alia*, denying that he knew of any such conspiracy.

73. Prior to the DOJ's March 2, 1999 announcement regarding its criminal prosecution of Lonza and the executives at Chinook and DuCoa, Plaintiffs were unaware that the Defendants had violated the antitrust laws as alleged in this Complaint.

74. Procter & Gamble did not discover through the exercise of reasonable diligence, the existence of the claims sued upon until after March 2, 1999, because Defendants and their co-conspirators actively, intentionally, and fraudulently concealed the existence of the combination and conspiracy.

75. In connection with the guilty pleas by Roche Ltd., BASF AG and Kuno Sommer, Defendants' own top executives made public statements regarding the secret nature of the unlawful conduct. For example, Franz B. Humer, the chief executive officer of Defendant Hoffman-LaRoche Ltd., stated at a May 21, 1999 press conference in Basel, Switzerland that "[I]t is clear that there was an elaborate conspiracy that was kept entirely secret by a small group of employees." Humer also referred to the "secret machinations" of Hoffman-LaRoche executives, including Roland Bronnimann (the President of the Vitamins and Fine Chemicals Division since 1989), Kuno Sommer, Andreas Hauri and others, stating that "[I]t certainly is not easy to understand the actions of employees who in secrecy organized a conspiracy of this kind."

76. Because of the fraudulent concealment of the conspiracy, Plaintiffs assert the tolling of

any applicable statute of limitations affecting the rights of action by Plaintiffs. In addition, under 15 U.S.C. § 16(i), the statute of limitations is suspended because of the DOJ's criminal prosecution of Defendants and their employees during the pendency of those proceedings and for one year thereafter.

INJURIES AND DAMAGES

77. During the period of time covered by the antitrust violations by Defendants and their Co-Conspirators, from 1988 through the present, Plaintiffs purchased vitamins, and by reason of the antitrust violations herein alleged, paid more for such vitamins than they would have paid in the absence of such antitrust violations. As a result, Plaintiffs have been injured and damaged in an amount presently undetermined.

FIRST CLAIM **(Violation of the Sherman Act)**

78. Plaintiffs incorporate by reference paragraphs 1 through 77 above as though fully set forth herein at length.

79. From 1988 to the present, Plaintiffs have purchased vitamins directly from one or more of the Defendants during the relevant time period.

80. The conduct of Defendants as alleged herein violates Section 1 of the Sherman Act (15 U.S.C. § 1).

81. As a result of Defendants' wrongful conduct, Plaintiffs have suffered damages in an amount to be proven at trial.

SECOND CLAIM **(Violation of the Ohio Valentine Act)**

82. Plaintiffs incorporate by reference paragraphs 1 through 81 above as though fully set forth herein at length.

83. The conduct of Defendants as alleged herein violated the Ohio Valentine Act, O.R.C. § 1331.01 *et seq.*

84. As a result of Defendants' wrongful conduct from 1988 to the present, the prices paid by Plaintiffs for vitamins have been controlled and affected.

85. As a result of Defendants' wrongful conduct, Plaintiffs have suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray and demand:

A. That the alleged combination and conspiracy among the Defendants and their Co-Conspirators be adjudged and decreed to be an unreasonable restraint of trade in *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

B. That the alleged combination and conspiracy among the Defendants and their Co-Conspirators be adjudged and decreed to be an unlawful combination to restrain trade and fix vitamin prices in *per se* violation of O.R.C. § 1331.01 *et seq.*

C. That judgment be entered against Defendants, jointly and severally, and in favor of Plaintiffs for threefold the damages determined to have been sustained by Plaintiffs together with the costs of suit, reasonable attorneys' fees and prejudgment interest;

D. That each of the Defendants, their successors, assignees, subsidiaries and transferees and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, and adopting or following

any practice, plan, program or design having a similar purpose or effect in restraining competition;
and

E. That Plaintiffs recover such other and further relief as may appear necessary and appropriate.

Respectfully submitted,



Stanley M. Chesley (0000852)

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Robert Heuck II (0051283)

WAITE, SCHNEIDER, BAYLESS

& CHESLEY CO., L.P.A.

1513 Fourth & Vine Tower

One West Fourth Street

Cincinnati, Ohio 45202

(513) 621-0267

ATTORNEYS FOR PLAINTIFFS,
THE PROCTER & GAMBLE COMPANY
THE PROCTER & GAMBLE
MANUFACTURING COMPANY
THE PROCTER & GAMBLE
DISTRIBUTING COMPANY
SUNDOR BRANDS, INC.

Of Counsel

David L. Grayson (0017166)

Senior Counsel

The Procter & Gamble Company

1 Procter & Gamble Plaza

Cincinnati, Ohio 45202

JURY DEMAND

Pursuant to Fed.R.Civ.P. 38(b), Plaintiffs demand trial by jury on all issues so triable.

Dated: June 26, 2001

Respectfully submitted,



Stanley M. Chesley (0000852)
Robert A. Steinberg Trial Attorney (0032932)
Robert Heuck II (0051283)
WAITE, SCHNEIDER, BAYLESS
& CHESLEY CO., L.P.A.
1513 Fourth & Vine Tower
One West Fourth Street
Cincinnati, Ohio 45202
(513) 621-0267

ATTORNEYS FOR PLAINTIFFS
THE PROCTER & GAMBLE COMPANY
THE PROCTER & GAMBLE
MANUFACTURING COMPANY
THE PROCTER & GAMBLE
DISTRIBUTING COMPANY
SUNDOR BRANDS, INC.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic service this 27th day of June, 2001 upon all counsel of record pursuant to the Court's May 17, 2000 Order regarding Electronic Service.



Robert Heuck II

EXHIBIT A

The Procter & Gamble Company Vitamin-Purchasing Subsidiaries

| | |
|-----------|--|
| Mexico | Procter & Gamble Manufactura, S. de R.L. de C.V. |
| U.K. | Procter & Gamble Technical Centers Limited |
| U.K. | Procter & Gamble Limited |
| Ireland | Procter & Gamble Ireland Limited |
| Ireland | Procter & Gamble (Manufacturing) Ireland Limited |
| Belgium | Procter & Gamble European Supply Company, BVBA |
| Indonesia | Procter & Gamble Home Products Indonesia |
| Indonesia | P.T. Procter & Gamble Indonesia |
| Japan | Procter & Gamble Far East, Inc. |

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

**PROCTER & GAMBLE FAR EAST, INC.'S RATIFICATION OF ACTION
BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY**

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble Far East, Inc., a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble Far East, Inc. also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

Procter & Gamble Far East, Inc.

By: 

Title: Vice President and Comptroller

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

**PROCTER & GAMBLE TECHNICAL CENTERS LIMITED'S RATIFICATION OF
ACTION BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY**

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble Technical Centers Limited, a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble Technical Centers Limited also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted.

Procter & Gamble Technical Centers Limited

By: MAHMOUD

Title: Company Secretary

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

**PROCTER & GAMBLE LIMITED'S RATIFICATION OF ACTION BROUGHT
ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY**

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble Limited, a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble Limited also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

Procter & Gamble Limited

By: MAWSS

Title: Company Secretary

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

THIS DOCUMENT RELATES TO:

Docket No. 99-3046 (TFH)

The Procter & Gamble Company, et al.

v. BASF AG, et al.

(Civil Action No. C-1-99-787 S.D. Ohio)

PROCTER & GAMBLE (MANUFACTURING) IRELAND, LTD.'S RATIFICATION OF
ACTION BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble (Manufacturing) Ireland, Ltd., a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99-3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble (Manufacturing) Ireland, Ltd. also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

Procter & Gamble (Manufacturing) Ireland, Ltd.

By: K. K. K.

Title: Director

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

**PROCTER & GAMBLE IRELAND, LTD.'S RATIFICATION OF ACTION
BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY**

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble Ireland, Ltd., a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble Ireland, Ltd. also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

Procter & Gamble Ireland, Ltd.

By: *Amneris*

Title: *Director*

TOTAL #.05

TOTAL P.09

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

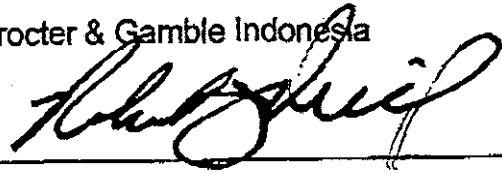
**P.T. PROCTER & GAMBLE INDONESIA'S RATIFICATION OF ACTION
BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY**

Pursuant to Federal Rules of Civil Procedure 17(a), P.T. Procter & Gamble Indonesia, a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. P.T. Procter & Gamble Indonesia also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

P.T. Procter & Gamble Indonesia

By: _____

A handwritten signature in black ink, appearing to be 'Rahmat Shuip', written over a horizontal line.

Title: _____

Commissioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

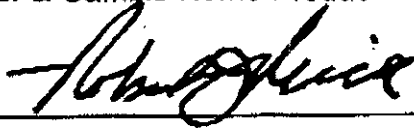
Docket No. 99-3046 (TFH)

**PROCTER & GAMBLE HOME PRODUCTS INDONESIA'S RATIFICATION OF
ACTION BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY**

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble Home Products Indonesia, a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble Home Products Indonesia also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

Procter & Gamble Home Products Indonesia

By: 

Title: Commissioner

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)


Docket No. 99-3046 (TFH)

**PROCTER & GAMBLE MANUFACTURA, S. de R.L. de C.V.'S RATIFICATION OF
ACTION BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY**

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble Manufactura, S. de R.L. de C.V., a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble Manufactura, S. de R.L. de C.V. also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

Procter & Gamble Manufactura,
S. de R.L. de C.V.

By: 
Angel de León

Title: Senior Counsel

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company, et al.
v. BASF AG, et al.
(Civil Action No. C-1-99-787 S.D. Ohio)

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

PROCTER & GAMBLE EUROPEAN SUPPLY COMPANY BVBA'S RATIFICATION OF ACTION BROUGHT ON ITS BEHALF BY THE PROCTER & GAMBLE COMPANY

Pursuant to Federal Rules of Civil Procedure 17(a), Procter & Gamble European Supply Company BVBA, a subsidiary of The Procter & Gamble Company, and purchaser of certain vitamins from one or more defendants herein, hereby ratifies the commencement on its behalf by The Procter & Gamble Company of the action entitled Empagran, S.A., et al. v. F. Hoffman LaRoche, Ltd., et al., (No. 1:00 CV0186 (TFH)), and the consolidation of claims asserted on its behalf by The Procter & Gamble Company in such action with such claims asserted in the action styled The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al., No. 99 3046 (TFH), now pending in the United States District Court for the District of Columbia. Procter & Gamble European Supply Company BVBA also hereby authorizes the continuation of The Procter & Gamble Company, et al. v. BASF Aktiengesellschaft, et al. by The Procter & Gamble Company in its own name and agrees to be bound by any judgment resulting in that action.

Respectfully submitted,

Procter & Gamble European Supply
Company BVBA

By:  26/06/01

Title: DIRECTOR

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

IN RE:

VITAMINS ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

The Procter & Gamble Company,
The Procter & Gamble Manufacturing Company,
The Procter & Gamble Distributing Company,
and Sundor Brands,

Plaintiffs

v.

BASF Aktiengesellschaft,
BASF Corporation,
F. Hoffman-LaRoche Ltd.,
Hoffman-LaRoche, Inc.,
Roche Vitamins, Inc.
Rhone-Poulenc S.A.,
Rhone-Poulenc, Inc.,
Rhone-Poulenc Animal Nutrition, Inc.,
Eisai Company, Ltd.,
Eisai U.S.A., Inc.,
Daiichi Pharmaceutical Company,
Daiichi Pharmaceutical Corporation,
Takeda Chemical Industries, Ltd.,
Takeda Vitamin & Food USA, Inc.,
Akzo Nobel, Inc.,
Akzo Nobel NV,
Bioproducts, Inc.,
DeGussa-Huls Aktiengesellschaft,
DeGussa-Huls Corporation,
Reilly Chemicals S.A.,
Reilly Industries, Inc.,
UCB S.A.,
UCB, Inc.,
Lonza Aktiengesellschaft,
Lonza, Inc.,
Chinook Group, Ltd.,
Chinook Group, Inc.,

M.D.L. No. 1285

Misc. No. 99-0197 (TFH)

Docket No. 99-3046 (TFH)

SECOND FIRST AMENDED
COMPLAINT FOR
VIOLATIONS OF THE
FEDERAL AND OHIO
ANTITRUST LAWS

(Jury Trial Demanded)

| | |
|----------------|---|
| DCV, Inc., and |) |
| DuCoa L.P., |) |
| |) |
| Defendants. |) |
| _____ |) |

Plaintiffs, The Procter & Gamble Company, The Procter & Gamble Manufacturing Company, The Procter & Gamble Distributing Company and Sundor Brands, Inc., (collectively, "~~Procter & Gamble~~" or "Plaintiffs"), bring this action against the above-named Defendants for treble damages and injunctive relief under the antitrust laws of the United States and the State of Ohio. Plaintiffs, demanding a trial by jury, complain and allege as follows:

JURISDICTION AND VENUE

1. This Complaint is filed and this action is instituted against the above-named Defendants under the Sherman Antitrust Act, 15 U.S.C. §1, the Clayton Act, 15 U.S.C. §§ 12, 15, 16 and 26, and the Ohio Valentine Act, O.R.C. §§ 1331.01 *et seq.*, to recover treble damages, injunctive relief, costs, attorneys' fees and prejudgment interest for the injuries Plaintiffs have sustained by reason of the Defendants' conspiracy to fix the prices of vitamins, allocate shares of the vitamin market, eliminate competition, limit supply and other unlawful conduct alleged herein.

2. This Court has jurisdiction over the federal antitrust claims pursuant to 28 U.S.C. §§ 1331 and 1337(a) and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26, and has supplemental jurisdiction over the state law claims, which involve the same case or controversy, pursuant to 28 U.S.C. § 1367(a).

3. Venue is proper in this District pursuant to 15 U.S.C. § 22 and 28 U.S.C. § 1391(b). Defendants transact business, maintain offices, have agents, and/or are found within this District and the State of Ohio. A substantial part of the events giving rise to Plaintiffs' claims occurred, and a

substantial portion of the affected interstate trade and commerce described below has been carried out, within this District and the State of Ohio. Defendants performed unlawful acts in furtherance of their unlawful combination and conspiracy within the Southern District of Ohio and elsewhere that were intended to affect and did affect Plaintiffs in this District. This action may be brought in this District pursuant to Sections 4 and 12 of the Clayton Act, 15 U.S.C. §§ 15 and 22 and 28 U.S.C. § 1391. Personal jurisdiction exists over all Defendants pursuant to Section 12 of the Clayton Act, 15 U.S.C. § 22, and the Ohio Long-Arm Statute, O.R.C. § 2307.382.

PLAINTIFFS

4. Plaintiff The Procter & Gamble Company ("P&G") is a corporation organized under the laws of Ohio, with its principal place of business in Cincinnati, Ohio. The Procter & Gamble Manufacturing Company ("P&G Manufacturing") is a corporation organized under the laws of Ohio with its principal place of business in Cincinnati, Ohio. Plaintiff The Procter & Gamble Distributing Company ("P&G Distributing") is a corporation organized under the laws of the State of Ohio with its principal place of business in Cincinnati, Ohio. Sundor Brands, Inc., is a corporation organized under the laws of Florida with its principal place of business in Cincinnati, Ohio. During the period relevant to this action, from 1988 to the present, P&G and its subsidiary and affiliated companies have manufactured and distributed a wide variety of consumer products and sold them in Ohio, throughout the United States and around the world. These products have included Sunny Delight orange drink, JIF peanut butter, Fat-Free Pringles potato snacks, Oil of Olay skin care lotion and Pantene Pro-V shampoo. Procter & Gamble P&G, and its subsidiaries, divisions and affiliates (collectively "Procter & Gamble") annually purchases, and have has purchased throughout the relevant time period, from the headquarters in Cincinnati and elsewhere substantial

vitamins, vitamin premixes, vitamin precursors and components, vitamin blends, and/or bulk vitamin products (all of which are collectively referred to herein as "vitamins") from one or more of the Defendants for use in the production of Procter & Gamble products in the United States and throughout the world. As a result, Procter & Gamble has been injured by reason of the conduct of Defendants alleged herein. The Procter & Gamble subsidiaries which purchased vitamins during the relevant time period have ratified the commencement of this action by The Procter & Gamble Company on their behalf and on behalf of their predecessors, pursuant to Federal Rule of Civil Procedure 17(a). A list of these subsidiaries is attached as Exhibit A. The ratifications of the subsidiaries are attached as Exhibit B.

DEFENDANTS

5. Defendant BASF Aktiengesellschaft ("BASF AG") Is a corporation organized and existing under the laws of Germany, with operations in the United States. At all relevant times, BASF AG, through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. BASF AG, directly and through its affiliates that it dominates and controls and through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Defendant BASF AG in Germany, including Dieter Suter, the head of fine chemicals, and Hugo Strotmann, global marketing director for vitamins, set prices and sales volumes and made strategic marketing decisions for vitamins that BASF AG's affiliates, including Defendant BASF Corporation, sold in the United States and elsewhere. Personal jurisdiction exists over BASF AG,

in part, based upon its activities and the activities of its corporate affiliates, in particular BASF Corporation, including the production, distribution and sale of vitamins in the United States, and because BASF AG and its affiliates consistently have presented a common corporate image (e.g., BASF) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

6. Defendant BASF Corporation is a Delaware corporation with its principal place of business in Mount Olive, New Jersey. BASF Corporation is a wholly-owned subsidiary or affiliate of BASF AG, and is dominated by BASF AG, both with respect to the conduct of its business within the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, BASF Corporation has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. BASF AG and BASF Corp. are collectively referred to herein as "BASF." BASF is the world's second-largest vitamin maker, with approximately twenty percent of the market.

7. Defendant F. Hoffman-LaRoche, Ltd. ("Roche Ltd.") is a corporation organized and existing under the laws of Switzerland, with operations in the United States. Roche, Ltd. is a subsidiary of Roche Holding Ltd., a Swiss pharmaceutical company based in Basel, Switzerland. At all relevant times, Roche Ltd., directly and through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Roche Ltd., directly and through its affiliates that it dominates and controls and through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful

agreements, executives of Roche Ltd. in Switzerland—including but not limited to Roland Bronnimann (President of Roche Ltd.'s Vitamins and Fine Chemicals Division since 1989), Kuno Sommer (former North American Regional Manager for vitamins and Director of Worldwide Marketing for vitamins), and Andreas Hauri (who retired from Roche Ltd. in 1994 as Executive Vice-President and Director of Worldwide Marketing for vitamins)—set prices and sales volumes for vitamins that its affiliates sold in the United States and elsewhere. During the relevant time period and in furtherance of Defendants' unlawful combination and conspiracy, Roche Ltd. executives at the Vitamins and Fine Chemicals Division's head office in Kaiseraugst, Switzerland also handled strategic marketing decisions for vitamins sold by its affiliates, including Defendants Hoffman-LaRoche, Inc. and Roche Vitamins Inc., in the United States and elsewhere throughout the world, and those decisions were implemented on an operational level by five area centers, including one for North America. Personal jurisdiction exists over Roche Ltd. based, in part, upon its activities and the activities of its corporate affiliates, in particular Hoffman-LaRoche Inc. and Roche Vitamins Inc., including the production, distribution and sale of vitamins in the United States, and because Roche Ltd. and its affiliates consistently have presented a common corporate image (e.g., Roche and Roche Vitamins) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

8. Defendant Hoffman-LaRoche, Inc., ("Roche Inc.") is a New Jersey corporation with its principal place of business in Nutley, New Jersey. Roche Inc. is wholly controlled and dominated by Roche Ltd. At all relevant times, Roche Inc., directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Defendant Roche Ltd. based in

Switzerland—including but not limited to Roland Brönnimann (President of Roche Ltd.'s Vitamins and Fine Chemicals Division since 1989), Kuno Sommer (former North American Regional Manager for vitamins and Director of Worldwide Marketing for vitamins), and Andreas Hauri (who retired from Roche Ltd. in 1994 as Executive Vice-President and Director of Worldwide Marketing for vitamins)— set prices and sales volumes and made strategic marketing decisions for the vitamins that Roche Inc. sold in the United States. Until at least 1997, Roche Inc. was directly engaged in the distribution and sale of vitamins in the United States and elsewhere.

9. Defendant Roche Vitamins, Inc. ("Roche Vitamins") is a Delaware corporation with its principal place of business in Parsippany, New Jersey. Roche Vitamins is wholly controlled and dominated by Roche Ltd., both with respect to the conduct of its business within the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Roche Vitamins, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Defendant Roche Ltd. based in Switzerland—including but not limited to Roland Brönnimann (President of Roche Ltd.'s Vitamins and Fine Chemicals Division since 1989), Kuno Sommer (former North American Regional Manager for vitamins and Director of Worldwide Marketing for vitamins), and Andreas Hauri (who retired from Roche Ltd. in 1994 as Executive Vice-President and Director of Worldwide Marketing for vitamins)— set prices and sales volumes and made strategic marketing decisions for the vitamins that Roche Vitamins sold in the United States. Roche Ltd., Roche Inc. and Roche Vitamins are collectively referred to herein as "Roche." Roche is the world's largest vitamin maker, with approximately forty percent of the market.

10. Defendant Rhone-Poulenc S.A. ("RP SA") is a corporation organized and existing under the laws of France, with operations in the United States. At all relevant times, RP SA, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. RP SA, directly and through affiliates it dominates and controls and through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, and fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of RP SA in France set the prices and sales volumes and made strategic marketing decisions for vitamins that RP SA's affiliates, including Defendants Rhone-Poulenc, Inc. and Rhone-Poulenc Animal Nutrition, Inc., sold in the United States and elsewhere. Personal jurisdiction exists over RP SA, in part, based upon its activities and the activities of its corporate affiliates, in particular Rhone-Poulenc Animal Nutrition, Inc. and Rhone-Poulenc, Inc., including the production, distribution and sale of vitamins in the United States and because RP SA and its affiliates consistently have presented a common corporate image (e.g. Rhone-Poulenc or Rhone-Poulenc Animal Nutrition) to customers in the United States and elsewhere through their advertising and marketing efforts and materials. In July 1999, the shareholders of RP SA and Hoechst AG approved the merger of the two companies' pharmaceutical and certain other operations under the umbrella of a new corporate entity, Aventis, with headquarters in Strasbourg, France.

11. Defendant Rhone-Poulenc, Inc. ("RP Inc.") is a New York corporation with its principal place of business in Research Triangle Park, New Jersey. RP Inc. is wholly controlled and

dominated by RP SA, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, RP Inc., directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Until at least January 1, 1998, RP Inc. was based in New Jersey and distributed and sold vitamins in the United States and elsewhere. Until January 1, 1998, Defendant RP Inc. sold vitamins through its division Rhone-Poulenc Animal Nutrition. On or about January 1, 1998, Defendant RP Inc. contributed its animal nutrition and vitamins product segments to a new company, Rhone-Poulenc Animal Nutrition, Inc. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Defendant RP SA in France set prices and sales volumes and made strategic marketing decisions for vitamins that RP Inc. sold in the United States.

12. Defendant Rhone-Poulenc Animal Nutrition, Inc. ("RPAN") is a Delaware corporation with its principal place of business in Atlanta, Georgia. RPAN is wholly controlled and dominated by RP SA, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, RPAN directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. RP SA, RP Inc., and RPAN are collectively referred to herein as "Rhone-Poulenc." Rhone-Poulenc is the world's third largest vitamin maker, with approximately 15% of the market.

13. Defendant Eisai Company is a corporation organized and existing under the laws of Japan, with operations in the United States. At all relevant times, Eisai Company, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Eisai Company, directly and

through its affiliates that it dominates and controls through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Eisai Company in Japan set prices and sales volumes and made strategic marketing decisions for vitamins that Eisai U.S.A., Inc. and its affiliates sold in the United States and elsewhere. Personal jurisdiction exists over Eisai Company, in part, based on its activities and the activities of its corporate affiliates, in particular Eisai U.S.A., Inc. including the production, distribution and sale of vitamins in the United States, and because Eisai Company and its affiliates have presented a common corporate image (e.g. Eisai) to customers through their advertising and marketing efforts.

14. Defendant Eisai U.S.A., Inc. is a California corporation with its principal place of business in Teaneck, New Jersey. Eisai U.S.A., Inc. is wholly controlled and dominated by Eisai Company, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Eisai U.S.A., Inc., directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Eisai Company and Eisai U.S.A., Inc. are collectively referred to herein as "Eisai."

15. Defendant Daiichi Pharmaceutical Company is a corporation organized and existing under the laws of Japan, with operations in the United States. At all relevant times, Daiichi Pharmaceutical Company directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District

and elsewhere. Daiichi Pharmaceutical Company, directly and through its affiliates that it dominates and controls through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Daiichi Pharmaceutical Company in Japan set prices and sales volumes and made strategic marketing decisions for vitamins that Daiichi Pharmaceutical Corporation and its affiliates sold in the United States and elsewhere. Personal jurisdiction exists over Daiichi Pharmaceutical Company, in part, based on its activities and the activities of its corporate affiliates, in particular Daiichi Pharmaceutical Corporation, including production, distribution and sale of vitamins in the United States, and because Daiichi Pharmaceutical Company and its affiliates have presented a common corporate image (e.g. Daiichi) to customers through their advertising and marketing efforts.

16. Defendant Daiichi Pharmaceutical Corporation is a Delaware corporation with its principal place of business in Montvale, New Jersey. Daiichi Pharmaceutical Corporation is wholly controlled and dominated by Daiichi Pharmaceutical Company, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Daiichi Pharmaceutical Corporation directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Daiichi Pharmaceutical Company and Daiichi Pharmaceutical Corporation are collectively referred to herein as "Daiichi."

17. Takeda Chemical Industries, Ltd. ("Takeda Chemical") is a corporation organized

and existing under the laws of Japan, with operations in the United States. At all relevant times, Takeda Chemical, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Takeda Chemical directly and through its affiliates that it dominates and controls and through actions both within and outside the United States, has allocated territories, customers, sales volumes and market shares, fixed prices and rigged bids for vitamins pursuant to *per se* illegal horizontal agreements and practices that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. In furtherance of such unlawful agreements, executives of Takeda Chemical in Japan set prices and sales volumes and made strategic marketing decisions for vitamins that Takeda Vitamin & Food U.S.A., Inc. and its affiliates sold in the United States and elsewhere. Personal jurisdiction exists over Takeda Chemical, in part, based upon its activities and the activities of its corporate affiliates, in particular Takeda Food & Vitamin U.S.A., including the production, distribution and sale of vitamins in the United States, and because Takeda Chemical and its affiliates consistently have presented a common corporate image (e.g. Takeda) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

18. Defendant Takeda Vitamin and Food U.S.A., Inc. ("Takeda Vitamin") is a North Carolina corporation, with its principal place of business in Wilmington, North Carolina. TakedaVitamin is wholly controlled and dominated by Takeda Chemical, both with respect to the conduct of its business in the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, Takeda Vitamin, directly or through its subsidiaries or affiliates, has engaged in the business of manufacture, distribution and/or sale of vitamins in

interstate commerce, in this District and elsewhere. Takeda Chemical and Tekeda Vitamin are collectively referred to herein as "Takeda."

19. Defendant Akzo Nobel NV ("Akzo Nobel") is a corporation organized and existing under the laws of the Netherlands with operations in the United States. Akzo Nobel manufactures vitamins and sells such vitamins in the United States and foreign countries. Akzo Nobel, directly and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over Akzo Nobel based, in part, on its activities as well as those of its corporate affiliates, in particular Akzo Nobel, Inc., including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because Akzo Nobel and its affiliates present a common corporate image (e.g. Akzo) to United States customers.

20. Defendant Akzo Nobel, Inc. ("Akzo, Inc.") is a Delaware corporation with its principal place of business in Chicago, Illinois. Akzo, Inc. is wholly controlled and dominated by Akzo Nobel, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, Akzo, Inc. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. Akzo Nobel and Akzo, Inc. are collectively referred to herein as "Akzo."

21. Defendant DeGussa-Huls Aktiengesellschaft ("DeGussa-Huls AG") is a corporation organized and existing under the laws of Germany with operations in the United States. DeGussa-Huls AG manufactures vitamins and sells such vitamins in the United States and foreign countries.

DeGussa-Huls AG, directly and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over DeGussa-Huls AG based, in part, on its activities as well as those of its corporate affiliates, in particular DeGussa-Huls Corporation, including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because DeGussa-Huls AG and its affiliates present a common corporate image (e.g. DeGussa-Huls) to United States customers.

22. Defendant DeGussa-Huls Corporation ("DeGussa-Huls Corp.") is a Delaware corporation with its principal place of business in Ridgefield Park, New Jersey. DeGussa-Huls Corp. is wholly controlled and dominated by DeGussa-Huls AG, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, DeGussa-Huls Corp. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. DeGussa-Huls AG and DeGussa-Huls Corp. are collectively referred to herein as "DeGussa-Huls."

23. Defendant Reilly Chemicals S.A. ("Reilly SA") is a corporation organized and existing under the laws of Belgium with operations in the United States. Reilly SA manufactures vitamins and sells such vitamins in the United States and foreign countries. Reilly SA, directly and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were

intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over Reilly SA based, in part, on its activities as well as those of its corporate affiliates, in particular Reilly Chemicals, Inc., including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because Reilly SA and its affiliates present a common corporate image (e.g. Reilly) to United States customers.

24. Defendant Reilly Industries, Inc. ("Reilly, Inc.") is an Indiana corporation with its principal place of business in Indianapolis, Indiana. Reilly, Inc. is wholly controlled and dominated by Reilly SA, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, Reilly, Inc. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. Reilly SA and Reilly, Inc. are collectively referred to herein as "Reilly."

25. Defendant UCB, S.A. ("UCB SA") is a corporation organized and existing under the laws of Belgium with operations in the United States. UCB SA manufactures vitamins and sells such vitamins in the United States and foreign countries. UCB SA, directly and through its affiliates that it dominates and controls, has allocated territories, customers and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on United States commerce. Personal jurisdiction exists over UCB SA based, in part, on its activities as well as those of its corporate affiliates, in particular UCB, Inc., including the production, distribution and sale of vitamins in the United States, and/or participation in a conspiracy which affected United States commerce and because UCB SA and its affiliates present a common corporate image (e.g. UCB) to

United States customers.

26. Defendant UCB, Inc. is a Delaware corporation with its principal place of business in Atlanta, Georgia. UCB, Inc. is wholly controlled and dominated by UCB SA, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, UCB, Inc. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. UCB SA and UCB, Inc. are collectively referred to herein as "UCB."

27. Defendant Bioproducts, Inc. ("Bioproducts") is a Delaware corporation with its principal place of business in Akron, Ohio. At all relevant times, Bioproducts, Inc. has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce in this District and elsewhere. Bioproducts has allocated territories, customers, and sales volumes and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial and reasonably foreseeable effect on interstate commerce.

28. Defendant Lonza Aktiengesellschaft ("Lonza AG") is a corporation organized and existing under the laws of Switzerland, with operations in the United States. Lonza AG manufactures vitamins, including vitamin B₃, in Switzerland and sells such vitamins in the United States and foreign countries. At all relevant times, Lonza AG, directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Lonza AG, directly and through its affiliates that it dominates and controls and through actions both within the United States and elsewhere, has allocated territories, customers and sales volumes and fixed prices for vitamins, including niacin and niacinamide in particular, pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States

commerce. During the relevant time period and in furtherance of such unlawful agreements, executives of Defendant Lonza AG in Switzerland set prices and sales volumes and made strategic marketing decisions for vitamins that Lonza AG's affiliates, including Lonza, Inc., sold in the United States and elsewhere. Personal jurisdiction exists over Lonza AG, in part, based upon its activities and the activities of its corporate affiliates, in particular Lonza, Inc., including the production, distribution and sale of vitamins in the United States, and because Lonza AG and its affiliates consistently have presented a common corporate image (*e.g.* Lonza) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

29. Defendant Lonza, Inc. is a New York corporation with its principal place of business in Fairlawn, New Jersey. Lonza, Inc. is wholly controlled and dominated by Lonza AG, both with respect to the conduct of its business in the United States generally and specifically with respect to the conduct alleged in this Complaint. At all relevant times, Lonza, Inc., directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere. Lonza AG and Lonza, Inc. are collectively referred to herein as "Lonza."

30. Defendant Chinook Group Limited ("Chinook Group Ltd.") is a corporation with its headquarters in Toronto, Canada that was organized in and currently exists under the laws of Ontario, Canada. Effective June 30, 1999, Chinook Group, a limited partnership formed under the laws of the Province of Ontario, executed a General Conveyance that transferred to Chinook Group Ltd. (the corporation) all of the partnership interest in Chinook Group (the limited partnership) and all the assets and property of the partnership, and Chinook Group Ltd. (the corporation) assumed and agreed to perform all of the debts, obligations and liabilities of Chinook Group (the limited partnership). Chinook Group Ltd., directly and through its predecessors

(including, in particular, the Chinook Group limited partnership) and affiliates, produces, distributes and sells various vitamins throughout the United States and elsewhere. Chinook Group Ltd., directly and through its affiliates that it dominates and controls and through actions both within the United States and elsewhere, has allocated territories and customers and fixed prices for vitamins pursuant to *per se* illegal horizontal agreements that were intended to have, and did have, a direct, substantial, and reasonably foreseeable effect on United States commerce. During the relevant period and in furtherance of such unlawful agreements, executives of Chinook Group Ltd. in Canada set prices and sales volumes and made strategic marketing decisions for vitamins that Chinook Group's affiliates, including Defendant Chinook Group, Inc., sold in the United States and elsewhere. Personal jurisdiction exists over Chinook Group Ltd., in part, based upon its activities and the activities of its corporate affiliates, in particular Chinook Group, Inc., including the production, distribution and sale of vitamins in the United States and because Chinook Group Ltd. and its affiliates consistently have presented a common corporate image (e.g. Chinook) to customers in the United States and elsewhere through their advertising and marketing efforts and materials.

31. Chinook Group, Inc. ("Chinook Inc.") is a Minnesota corporation with its principal place of business in White Bear Lake, Minnesota. Chinook Inc. is a wholly owned subsidiary of Defendant Chinook Group Ltd. In conjunction with Chinook Group Ltd., Chinook Inc. has distributed and sold vitamins including choline chloride throughout the United States and elsewhere. During the relevant period and in furtherance of Defendants' *per se* unlawful agreements, executives of Chinook Group Ltd. in Canada set prices and sales volumes and made strategic marketing decisions for vitamins that Chinook Inc. sold in the United States and elsewhere.

32. Defendant DCV, Inc. is a Delaware corporation with its principal place of business in Wilmington, Delaware. At all relevant times, DCV, Inc. directly or through its subsidiaries or

affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere.

33. Defendant DuCoa, L.P. ("DuCoa") is a limited partnership with its principal place of business in Highland, Illinois. Du Coa is wholly controlled by DCV, Inc., both with respect to the conduct of its business within the United States generally and specifically with respect to its conduct alleged in this Complaint. At all relevant times, DuCoa, directly or through its subsidiaries or affiliates, has engaged in the business of the manufacture, distribution and/or sale of vitamins in interstate commerce, in this District and elsewhere.

34. The acts charged in this Complaint to have been done by each of the Defendants were authorized, ordered or done by their officers, agents, employees, or representatives, while actively engaged in the management or conduct of each of the Defendant's affairs.

35. Whenever any reference is made in this Complaint to any Defendant or Co-Conspirator, the references shall include any predecessors, successors, parents, subsidiaries, affiliates, divisions, offices, agents or representatives of that Defendant or Co-Conspirator.

CO-CONSPIRATORS

36. Various other persons, firms and corporations, the identities of which are presently unknown, have participated as Co-Conspirators with the Defendants in the violations alleged herein and have performed acts and made statements in furtherance thereof that had a direct, substantial and reasonably foreseeable effect on United States commerce. On information and belief, such Co-Conspirators include unnamed wholesalers and distributors of Defendants who were controlled by such Defendants or otherwise actively participated in the conspiracy.

INTERSTATE TRADE AND COMMERCE

37. During all or part of the relevant time period, Defendants and their Co-Conspirators

were among the major manufacturers, sellers and/or distributors of vitamins in the United States and throughout the world.

38. During all or part of the relevant time period, the Defendants and their Co-Conspirators sold and shipped substantial quantities of vitamins in a continuous and uninterrupted flow in interstate and foreign commerce to customers, including Plaintiffs Procter & Gamble, located in states other than the state(s) or countries in which the Defendants produced the above-referenced products.

39. The business activities of the Defendants and their Co-Conspirators that are the subject of this Complaint, including, but not limited to, the sale of vitamins to Procter & Gamble, were within the flow of, ~~and~~ or substantially affected, interstate trade and commerce. Those activities that took place outside the United States had direct, substantial, and reasonably foreseeable effects on United States commerce and on Plaintiffs in particular.

BACKGROUND AND NATURE OF TRADE AND COMMERCE

40. The Defendants are manufacturers and distributors of vitamins. Vitamins are organic compounds required in the diet of humans and animals for normal growth and maintenance of life. Vitamins are essential sources of certain coenzymes necessary for metabolism, the biochemical processes that support life. All known vitamins have been synthesized chemically, and various such synthesized vitamins are manufactured and sold by the Defendants and their Co-Conspirators.

41. The Defendants and their Co-Conspirators sell vitamins to Plaintiffs Procter & Gamble and other manufacturers for use as ingredients in foods, skin and hair care products, and other products sold to consumers.

41(a). During the relevant period Procter & Gamble purchased vitamins for its beauty and hair care products on a coordinated, global basis from the Cincinnati headquarters of the parent

company, P&G. P&G's Global Purchasing Manager coordinated and supervised purchasing of vitamins for Procter & Gamble beauty and hair care products through P&G's International Logistics Group in Cincinnati, Ohio. P&G employees in Cincinnati solicited and received quotations from vitamin manufacturers for vitamin requirements of Procter & Gamble facilities located outside the United States, including the United Kingdom, Ireland, Australia, China, India, Indonesia, Japan, Taiwan, Brazil, Mexico, Columbia and France. P&G, the parent company, and/or P&G Manufacturing, in the United States, entered purchase contracts on behalf of Procter & Gamble with Defendants for the supply of vitamins to Procter & Gamble subsidiaries and/or operations located outside the United States. P&G personnel in Cincinnati monitored the requirements and arranged for the supply of vitamins for beauty and hair care products for Procter & Gamble subsidiaries and operations in Europe, Japan and elsewhere. Throughout the relevant period, sales by Defendants to the Procter & Gamble foreign subsidiaries of vitamins had direct, substantial, and reasonably foreseeable effects on United States commerce.

41(b). During the relevant time period, Procter & Gamble's worldwide purchases of vitamins were subject to the ultimate supervision and control of P&G, the parent company, in Cincinnati, Ohio. Purchasing managers at the parent company in the United States monitored Procter & Gamble's worldwide purchases of vitamins and communicated with Procter & Gamble personnel outside the United States concerning the procurement of vitamins. Purchases of vitamins outside the United States are subject to Procter & Gamble's Global Purchases Standards for Sourcing, issued by the parent company in Cincinnati. Employees of foreign Procter & Gamble subsidiaries who purchased vitamins were trained in Cincinnati by the parent company concerning sourcing strategy, preparation of inquiries and bidding packages and negotiations. The Procter &

Gamble Corporate Purchasing Group in Cincinnati regularly issued materials on purchasing guidelines to employees of foreign Procter & Gamble companies engaged in vitamin purchasing. Throughout the relevant time period, sales by Defendants to the Procter & Gamble foreign subsidiaries of vitamins had direct, substantial, and reasonably foreseeable effects on United States commerce.

41(c). Plaintiff P&G Manufacturing entered into one or more agreements in the United States with one or more of the Defendants for the purchase of vitamins for shipment by the Defendants to Procter & Gamble facilities outside the United States. The prices charged to Procter & Gamble by Defendants pursuant to these agreements were supra-competitive as a result of the price-fixing conspiracy alleged herein. P&G Manufacturing suffered injury in the United States because the purchase agreements provided for payment by P&G Manufacturing of prices that were artificially high due to such price-fixing conspiracy. Such injury to P&G Manufacturing had direct, substantial and reasonably foreseeable effects on United States commerce.

41(d). The Procter & Gamble companies listed on Exhibit A hereto are subsidiaries of the Procter & Gamble Company. Purchases of vitamins by Procter & Gamble subsidiaries listed on Exhibit A caused injury in United States commerce to the American parent company, The Procter & Gamble Company, because the excessive prices charged by Defendants to the closely-held foreign subsidiaries directly impacted the United States operations and earnings of the parent company. The Procter & Gamble Company serves as the global headquarters in the United States for foreign Procter & Gamble subsidiaries. The purchasing operations of The Procter & Gamble Company and its subsidiaries are extensively coordinated through frequent communications, global strategy and direction from the Cincinnati headquarters. The injury to The Procter & Gamble Company from Defendants' charging of excessive prices to foreign Procter & Gamble companies was suffered in

the United States. Such injury affected United States commerce.

42. During the relevant period, Roche, BASF and Rhone-Poulenc were by far the dominant producers of vitamins controlling more than seventy-five percent of the worldwide vitamin market. During the relevant period, these Defendants controlled more than ninety-five percent of the worldwide markets for vitamins A and E. As a result, Plaintiffs typically had no alternative to purchasing their vitamins from Defendants. Throughout this same period, Defendants falsely represented themselves as competitors in the manufacture, distribution and sale of vitamins when, in fact, they were participants in a worldwide *per se* unlawful conspiracy, the purpose and affect of which were to eliminate and suppress competition.

43. Absent Defendants' *per se* unlawful horizontal agreements to allocate territories, customers, sales, volumes and market shares and fix prices and rig bids for vitamins, Plaintiffs Procter & Gamble would have obtained lower prices for the vitamins they purchased.

44. There is a single world market for the production, sale and distribution of vitamins. Defendants produce, distribute, sell, advertise and market vitamins throughout the world. Defendants' vitamin production and distribution facilities are located throughout the world. For example, Defendant F. Hoffman-LaRoche Ltd. and its affiliates, which are the world's largest producers of synthetic vitamins and carotenoids, own and operate twelve production sites located in seven countries, including the United States, that supply the global vitamin market. Defendants have bid or supplied vitamins to Plaintiffs Procter & Gamble in the United States and elsewhere around the world.

45. Defendants' global conspiracy directly affected the world market for the production, distribution and sale of vitamins as well as United States interstate and foreign commerce in those vitamin products, which is an integral part of the overall world market. The anticompetitive

purpose and effect of Defendants' unlawful combination and conspiracy were to artificially inflate the prices that Plaintiffs Procter & Gamble and others paid for vitamins in the United States and throughout the rest of the world.

46. Defendants' illegal conduct both within the United States and elsewhere was intended to have and did have a direct, substantial, and reasonably foreseeable effect upon business and commerce in the United States and upon the interstate and foreign commerce of the United States. In particular, as a result of their unlawful combination and conspiracy, Defendants: (a) eliminated or suppressed competition in the production, distribution and sale of vitamins; and (b) inflated the prices that Plaintiffs Procter & Gamble and others paid for vitamins in the United States and throughout the world.

47. Defendants have received bid solicitations or pricing requests from and negotiated with Plaintiffs and other customers to supply vitamins in the United States and throughout the world. In this connection, Defendants prepared bids and price quotations at their offices in the United States which they transmitted across state and national boundaries to Plaintiffs and other customers using the United States mails and other interstate and foreign communication, including electronic communications, and financial facilities.

48. During the relevant period and continuing to the present, Defendants produced, distributed and sold vitamins in interstate and foreign commerce. Defendants' production, distribution and sale of vitamins involved a substantial and continuous flow of commodities, payments and personnel in, and that directly affect, interstate and foreign commerce, including at least the following:

- (a) Defendants have sold and provided vitamins in a continuous and uninterrupted flow of interstate and foreign commerce to Plaintiffs and other customers located in the

United States and elsewhere throughout the world;

- (b) Defendants have purchased and used substantial quantities of raw materials, equipment and supplies in connection with the production, distribution and sale of vitamins, and have transported those materials in a continuous and uninterrupted flow of interstate and foreign commerce from the states or countries of origin into the states or countries where the items were purchased, used or consumed;
- (c) Plaintiffs and other customers have paid Defendants for vitamins with checks, letters of credit and other financial instruments that were negotiated, communicated and transported in interstate and foreign commerce;
- (d) As a result of Defendants' multinational operations, corporate structure and ownership, on a daily basis Defendants transferred funds and exchanged information among offices and facilities that are engaged in interstate and foreign commerce;
- (e) Defendants' officers, employees, agents and other representatives have regularly traveled in interstate and foreign commerce and have used interstate and foreign mail, telephone and wire facilities in furtherance of their illegal combination and conspiracy.

49. On September 30, 1998, the United States Department of Justice, Antitrust Division ("DOJ") filed under seal a criminal information against Lonza as the result of a federal grand jury probe conducted in Dallas, Texas. That information was unsealed on March 1, 1999, and revealed that Lonza was accused of conspiring with the other leading manufacturers of vitamin B₃ (niacinamide) to eliminate competition in the United States and elsewhere from at least January of 1992 to at least March of 1998. Lonza agreed to plead guilty to this charge and pay a \$10.5 million fine.

50. On March 2, 1999, criminal informations were filed by the DOJ against: (a) Lindell Hilling, former President of DuCoa; (b) J.L. "Pete" Fischer, President, Basic and International Products, of DuCoa; (c) Antonio Felix, Vice-President, Basic and International Products, of DuCoa.; (d) John Kennedy, Vice-President of Sales and Marketing of Chinook Group; and (e) Robert Samuelson, Sales Manager of Chinook Group. These five executives were charged with conspiring with others to suppress and eliminate competition in the vitamin B₄ market in the United States and elsewhere from at least January of 1988 through September of 1998. All three executives pleaded guilty to these criminal charges.

51. On May 20, 1999, Roche Ltd. pleaded guilty to a criminal information filed by the DOJ for fixing prices and allocating customers and sales of certain vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Roche Ltd. agreed to pay a \$500 million fine, the highest criminal fine for an antitrust violation in history. Dr. Kuno Sommer, a former Roche Ltd. executive, was separately charged for attempting to cover up the conspiracy, agreed to plead guilty, and was sentenced to a four-month prison term and a \$100,000 fine.

52. On May 20, 1999, BASF AG pleaded guilty to a criminal information filed by the DOJ for fixing prices and allocating customers and sales of certain vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. BASF AG agreed to pay a \$225 million fine.

53. Roche Ltd., BASF AG, and other unnamed Co-Conspirators were charged by the DOJ with agreeing with the world's other major vitamin manufacturers to suppress and eliminate competition in the United States and elsewhere, by among other things:

- (a) agreeing to fix and raise prices on Vitamins A, B₂, B₅, C, E, beta carotene and vitamin premixes in the U.S. and elsewhere;

- (b) agreeing to allocate the volume of sales and market shares of such vitamins in the U.S. and elsewhere;
- (c) agreeing to divide contracts to supply vitamin premixes to customers in the U.S. and elsewhere by rigging the bids for those contracts; and
- (d) participating in meetings and conversations to monitor and enforce adherence to the agreed-upon prices and market shares.

54. The DOJ also announced on May 20, 1999 that Rhone-Poulenc S.A. had been cooperating in its investigation pursuant to the DOJ's Corporate Leniency Program, under which a company may qualify for protection from criminal prosecution if it voluntarily reported its involvement in a crime and satisfies certain other criteria.

55. On or about September 10, 1999, Takeda Chemical entered into a plea agreement with the DOJ whereby Takeda Chemical agreed to plead guilty to fixing the prices and allocating sales of vitamins B₂ and C in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1. Takeda Chemical agreed to pay a fine to the United States of \$72 million.

56. On September 10, 1999, Defendant Eisai Company pleaded guilty to criminal charges brought by the DOJ and agreed to pay a fine of \$40 million to the United States for fixing the price and allocating the sales of vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

57. On September 10, 1999, Defendant Daiichi Pharmaceutical Company pleaded guilty to criminal charges brought by the DOJ and agreed to pay a fine of \$25 million to the United States for fixing the price and allocating the sales of vitamins in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

CONSPIRACY TO RESTRAIN TRADE

58. Beginning at least as early as January 1988 and continuing thereafter, the exact dates being unknown to Plaintiffs, Defendants and Co-Conspirators entered into and participated in a combination and conspiracy to suppress and eliminate competition, allocate territories, customers, sales volumes and market shares, rig bids and artificially raise, maintain, stabilize or fix prices of vitamins. The combination and conspiracy engaged in by Defendants and Co-Conspirators was an unreasonable restraint of interstate and foreign trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1, and in further restraint of trade and commerce under the Ohio Valentine Act, O.R.C. §§ 1331.01 *et seq.*

59. From at least January 1990 through February 1999, the exact dates being unknown to Plaintiffs, BASF, Roche, Rhone-Poulenc, and other co-conspirators, would meet on at least a quarterly basis to exchange pricing information, sales volumes, and market shares at the country, regional, and global levels. In addition to these regular meetings, the co-conspirators engaged in numerous other communications, both by telephone and in person, to monitor market conditions and update each other on the latest pricing and sales results on a region-by-region basis, or to otherwise facilitate and implement the conspiracy.

60. In addition to the meetings described above, top-level representatives of Roche, BASF, Rhone-Poulenc, and other co-conspirators would meet once a year to set what they called the "budget" for the following year. During these "budget" meetings, the co-conspirators would project global sales volumes for vitamins A and E, and allocate among them the next year's market share for those vitamins, broken down by geographic region (including the United States). The co-conspirators would also agree at these "budget" meetings upon (a) the total volume of vitamins A and E to be sold by the co-conspirators in the United States and elsewhere, (b) the amount of the

price increases for vitamins A and E involved in the conspiracy at the time, (c) the dates that they would announce the price increases, and (d) which co-conspirator would first announce the price increases. Daiichi, Takeda and Eisai joined in the conspiracy.

61. BASF, Roche, Rhone-Poulenc, Eisai, and the other co-conspirators sold Vitamins A and E at the agreed-upon prices and in accordance with the agreed-upon sales volume allocations in the United States and elsewhere.

62. In or about January 1991, BASF, Roche, Rhone-Poulenc, and other co-conspirators expanded the scope of the conspiracy to include Vitamin B₂, Vitamin B₅, Vitamin C, Beta Carotene, and Pre-mix.

63. The alleged combination and conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendants and Co-Conspirators, the substantial terms of which were:

- (a) to agree to fix and maintain prices and to coordinate price increases for the sale of vitamins in the United States and elsewhere;
- (b) to agree to allocate among the corporate conspirators the volume of sales of vitamins in the United States and elsewhere;
- (c) to agree to allocate among the corporate conspirators customers of vitamins in the United States and elsewhere;
- (d) to allocate among the corporation conspirators all or part of certain contracts to supply vitamins to various customers located throughout the United States;
- (e) to refrain from submitting bids, or to submit collusive, non- competitive, and rigged bids to supply vitamins to various customers located in the United States; and
- (f) to supply vitamins to various customers located throughout the United States at

supra-competitive prices, and receive excessive compensation as a result.

64. For the purposes of forming and carrying out the illegal combination and conspiracy, Defendants and Co-Conspirators did those things that they combined and conspired to do, including, among other things:

- (a) participating in meetings and conversations in the United States and elsewhere to discuss the prices and volume of vitamins sold in the United States and elsewhere;
- (b) agreeing, during those meetings and conversations, to charge prices at specified levels and otherwise to increase and maintain prices of vitamins sold in the United States and elsewhere;
- (c) agreeing, during those meetings and conversations, to allocate among the corporate conspirators the approximate volume of vitamins to be sold by each corporate conspirator in the United States and elsewhere;
- (d) agreeing, during those meetings and conversations, to allocate among the corporate conspirators customers of vitamins in the United States and elsewhere;
- (e) agreeing, during those meetings and conversations, to divide worldwide markets for vitamins among the corporate conspirators;
- (f) agreeing, during those meetings and conversations, to restrict vitamin producing capacity among the corporate conspirators;
- (g) exchanging sales and customer information for the purpose of monitoring and enforcing adherence to the above-described agreement;
- (h) issuing price announcements and price quotations in accordance with the agreements reached;
- (i) discussing among Co-Conspirators the submission of prospective bids to supply

- vitamins to customers located throughout the United States;
- (j) designating which corporate conspirator would be the designated low bidder for contracts to supply vitamins to customers located throughout the United States;
 - (k) discussing and agreeing upon prices to be contained within the bids for contracts to supply vitamins to customers in the United States;
 - (l) refraining from bidding or submitting intentionally high, complementary bids for the contracts to supply vitamins to customers in the United States; and
 - (m) supplying vitamins to various customers in the United States at non-competitive prices and receiving compensation therefor.

65. In furtherance of their unlawful combination and conspiracy, Defendants agreed to take steps to suppress, eliminate and control competition from independent blenders and mixers who produce and sell vitamins in competition with Defendants. In particular, Defendants engaged in a price squeeze maintaining the prices at which they sold individual vitamin components ("straight vitamins" or "straights") to independent blenders or mixers of vitamin premixes at higher prices relative to the prices that Defendants charged for their own premixes. As part of this strategy, Defendants used their dominance over the production and sale of straights to eliminate, suppress or control competition from independent premix blenders or mixers that might threaten Defendants' dominance and control of the production of and prices for vitamin premixes.

66. Defendants and their co-conspirators have engaged in a variety of acts to facilitate the formation and conduct of their unlawful combination and conspiracy, including the following:

- (a) Defendants and their co-conspirators have exchanged and shared data regarding sales volumes and vitamins and the raw materials used to produce vitamins to monitor and enforce adherence to their agreed upon scheme to allocate territories,

customers, sales volumes and market shares and to rig bids and fix prices of vitamins.

- (b) Defendants' European executives and their American and Asian marketing counterparts implemented various agreements to allocate territories, customers, sales volumes and market shares among the Defendants and their co-conspirators.
- (c) Defendants and their co-conspirators have manipulated the supply and sale of intermediate chemicals used to produce vitamins, and have made threats to refuse to sell such intermediate chemicals to others unless they abided by restrictions on where and to whom vitamins could be marketed.
- (d) Defendants have purchased and sometimes closed vitamin manufacturing facilities and formed joint ventures to control the supply of vitamins.

67. Each Defendant has participated in one or more overt acts in furtherance of the conspiracy alleged above and has participated in conspiratorial activities and attended conspiratorial meetings.

EFFECTS OF CONSPIRACY TO RESTRAIN TRADE

68. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) Price competition in the sale of vitamins among the Defendants and their Co-Conspirators has been restrained, suppressed and eliminated throughout the United States and elsewhere;
- (b) Prices for vitamins sold by the Defendants and their Co-Conspirators have been raised, fixed, maintained and stabilized at artificially high and non-competitive levels throughout the United States and elsewhere; and
- (c) Purchasers of vitamins from the Defendants and their Co-Conspirators have been

deprived of the benefit of free and open competition.

- (d) Competition among sellers of vitamins in the United States and elsewhere has been restricted.

FRAUDULENT CONCEALMENT TOLLED
THE STATUTE OF LIMITATIONS

69. Until shortly before the filing of this Complaint, Plaintiffs Procter & Gamble had no knowledge that Defendants and their Co-Conspirators were violating the antitrust laws as alleged herein. Plaintiffs Procter & Gamble could not have discovered any of the violations at any time prior to this date by the exercise of due diligence because of fraudulent and active concealment of the conspiracy by Defendants and their Co-Conspirators.

70. The affirmative actions of Defendants and their Co-Conspirators alleged herein were wrongfully concealed and carried out in a manner that precluded detection. Plaintiffs Procter & Gamble had no knowledge of the antitrust violations herein alleged or any facts that might have led to their discovery. Plaintiffs Procter & Gamble could not have uncovered the violations alleged herein at an earlier date by the exercise of due diligence inasmuch as the means for discovering their causes of action against Defendants were not reasonably ascertainable due to the fraudulent concealment of their activities through various means and methods designed to avoid detection. The Defendants and their Co-Conspirators secretly conducted activities in furtherance of the conspiracy and attempted to confine information concerning the conspiracy to key officials of the involved companies.

71. Defendants and their co-conspirators were concerned about maintaining the secrecy of the conspiracy. The participants at the conspiracy meetings expressly understood that no notes

were to be kept evidencing the fact and nature of the meetings, the top-level members of the conspiracy ordered the co-conspirators to destroy all records and/or notes pertaining to those meetings. Roche executives continually emphasized to their subordinates that documents generated for use during the so-called "budget" meetings at which the market shares were allocated among the conspirators were to be kept to a minimum and destroyed immediately after the meetings. Furthermore, the co-conspirators used code numbers rather than their names to designate themselves in documents prepared in furtherance of the conspiracy.

72. In or about March 12, 1997, attorneys for the DOJ's Antitrust Division interviewed Kuno Sommer of Roche in connection with a plea agreement reached between the DOJ and Roche for criminal antitrust violations arising out of the sale of another food additive, citric acid. In order to conceal the conspiracy alleged herein, top Roche officials agreed that Sommer would deny its existence and even rehearsed his "cover story" denying the cartel activity. At the March 12, 1997 interview, the DOJ attorneys questioned Sommer in detail about the existence of a vitamins cartel and Sommer lied to the DOJ attorneys by, *inter alia*, denying that he knew of any such conspiracy.

73. Prior to the DOJ's March 2, 1999 announcement regarding its criminal prosecution of Lonza and the executives at Chinook and DuCoa, Plaintiffs were unaware that the Defendants had violated the antitrust laws as alleged in this Complaint.

74. Plaintiffs Procter & Gamble did not discover through the exercise of reasonable diligence, the existence of the claims sued upon until after March 2, 1999, because Defendants and their co-conspirators actively, intentionally, and fraudulently concealed the existence of the combination and conspiracy.

75. In connection with the guilty pleas by Roche Ltd., BASF AG and Kuno Sommer,

Defendants' own top executives made public statements regarding the secret nature of the unlawful conduct. For example, Franz B. Humer, the chief executive officer of Defendant Hoffman-LaRoche Ltd., stated at a May 21, 1999 press conference in Basel, Switzerland that "[I]t is clear that there was an elaborate conspiracy that was kept entirely secret by a small group of employees." Humer also referred to the "secret machinations" of Hoffman-LaRoche executives, including Roland Bronnimann (the President of the Vitamins and Fine Chemicals Division since 1989), Kuno Sommer, Andreas Hauri and others, stating that "[I]t certainly is not easy to understand the actions of employees who in secrecy organized a conspiracy of this kind."

76. Because of the fraudulent concealment of the conspiracy, Plaintiffs assert the tolling of any applicable statute of limitations affecting the rights of action by Plaintiffs. In addition, under 15 U.S.C. § 16(i), the statute of limitations is suspended because of the DOJ's criminal prosecution of Defendants and their employees during the pendency of those proceedings and for one year thereafter.

INJURIES AND DAMAGES

77. During the period of time covered by the antitrust violations by Defendants and their Co-Conspirators, from 1988 through the present, Plaintiffs purchased vitamins, and by reason of the antitrust violations herein alleged, paid more for such vitamins than they would have paid in the absence of such antitrust violations. As a result, Plaintiffs have been injured and damaged in an amount presently undetermined.

FIRST CLAIM (Violation of the Sherman Act)

78. Plaintiffs incorporate by reference paragraphs 1 through 77 above as though fully

set forth herein at length.

79. From 1988 to the present, Plaintiffs have purchased vitamins directly from one or more of the Defendants during the relevant time period.

80. The conduct of Defendants as alleged herein violates Section 1 of the Sherman Act (15 U.S.C. § 1).

81. As a result of Defendants' wrongful conduct, Plaintiffs have suffered damages in an amount to be proven at trial.

SECOND CLAIM
(Violation of the Ohio Valentine Act)

82. Plaintiffs incorporate by reference paragraphs 1 through 81 above as though fully set forth herein at length.

83. The conduct of Defendants as alleged herein violated the Ohio Valentine Act, O.R.C. § 1331.01 *et seq.*

84. As a result of Defendants' wrongful conduct from 1988 to the present, the prices paid by Plaintiffs for vitamins have been controlled and affected.

85. As a result of Defendants' wrongful conduct, Plaintiffs have suffered damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray and demand:

A. That the alleged combination and conspiracy among the Defendants and their Co-Conspirators be adjudged and decreed to be an unreasonable restraint of trade in *per se* violation of Section 1 of the Sherman Act, 15 U.S.C. § 1;

B. That the alleged combination and conspiracy among the Defendants and their Co-Conspirators be adjudged and decreed to be an unlawful combination to restrain trade and fix vitamin prices in *per se* violation of O.R.C. § 1331.01 *et seq.*

C. That judgment be entered against Defendants, jointly and severally, and in favor of Plaintiffs for threefold the damages determined to have been sustained by Plaintiffs together with the costs of suit, reasonable attorneys' fees and prejudgment interest;

D. That each of the Defendants, their successors, assignees, subsidiaries and transferees, and their respective officers, directors, agents and employees, and all other persons acting or claiming to act on behalf thereof or in concert therewith, be perpetually enjoined and restrained from, in any manner, directly or indirectly, continuing, maintaining or renewing the aforesaid combination, conspiracy, agreement, understanding or concert of action, and adopting or following any practice, plan, program or design having a similar purpose or effect in restraining competition; and

E. That Plaintiffs recover such other and further relief as may appear necessary and appropriate.

Respectfully submitted,

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JURY DEMAND

Pursuant to Fed.R.Civ.P. 38(b), Plaintiffs demand trial by jury on all issues so triable.

Dated: _____

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic service this ____ day of _____, 2001 upon all counsel of record pursuant to the Court's May 17, 2000 Order regarding Electronic Service.

Robert Heuck II